

BILL NO. G-91-02-27 (AS AMENDED) (AS AMENDED)

GENERAL ORDINANCE NO. G-07-91

AN ORDINANCE amending Chapter  
13 of the City of Fort Wayne  
Code of Laws.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Chapter 13 of the City of Fort  
Wayne Code of Laws be amended as follows:

CHAPTER 13. FOOD AND BEVERAGE ESTABLISHMENTS

ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.  
Sec. 13.3. Posting.  
Sec. 13.4. Separate Permits.  
Sec. 13.5. Application/Food Establishment.  
Sec. 13.6. Application/Vending Machine.  
Sec. 13.7. Issue.  
Sec. 13.8. Term.  
Sec. 13.9. Permit not Transferable.

ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION  
OF FOOD ESTABLISHMENTS AND VENDING  
MACHINES

Sec. 13.10. Construction, Renovation and Alteration of  
Food Establishments and Vending Machines.

ARTICLE IV. APPLICATION AND/OR PERMIT FEES

Sec. 13.11. Fees.  
Sec. 13.12. Application Fees.  
Sec. 13.13. Permit Fees for Food Service Establishments,  
Temporary Food Service Establishments,  
Temporary Food Markets, and Food Processing  
Establishments.  
Sec. 13.14. Permit Fees for a Food Market.  
Sec. 13.15. Permit Fees for a Mobile Food Service  
Establishment and/or Mobile Food Market.  
Sec. 13.16. Permit Fees for a Vending Operator.  
Sec. 13.17. Permit Fees for Food Establishments Owned or  
Operated by any School Corporation.  
Sec. 13.18. Failure to Obtain or Renew Permit.  
Sec. 13.19. Exemption.

ARTICLE V. MINIMUM SANITARY REQUIREMENTS

Sec. 13.20. Minimum Sanitary Requirements for Food  
Establishments, Vending Operators, Food and  
Beverage Vending Machines and Bed and  
Breakfast Inns.  
Sec. 13.21. The Minimum Sanitary Requirements for  
Temporary Food Markets.  
Sec. 13.22. Adoption of Rules and Regulations Established  
by the Indiana State Board of Health for Bed  
and Breakfast Inns.



Sec. 13.23. Designation of a "No Smoking" Area.

## ARTICLE VI. HEALTH AND DISEASE CONTROL

Sec. 13.24. Infected Persons Prohibited.  
Sec. 13.25. Procedure When Disease Suspected.  
Sec. 13.26. Hand Washing.

## ARTICLE VII. SALE, EXAMINATION, CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD OR BEVERAGE

Sec. 13.27. Sale of Food or Beverage which is Unwholesome, Adulterated or Misbranded.  
Sec. 13.28. Health Commissioner Examination of Food or Beverage.  
Sec. 13.29. Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.  
Sec. 13.30. Public Embargo.

## ARTICLE VIII. EDUCATION

Sec. 13.31. Food Handler Education.

## ARTICLE IX. INSPECTIONS

Sec. 13.32. Frequency of Inspection.  
Sec. 13.33. Inspection of Temporary Food Service Establishment.  
Sec. 13.34. Authority to Inspect and to Copy Record.  
Sec. 13.35. Procedure When Violations Noted.

## ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE, REVOCATION HEARING AND REINSTATEMENT OF PERMIT.

Sec. 13.36. Suspension of Permit.  
Sec. 13.37. Immediate Closure.  
Sec. 13.38. Revocation of Permit.  
Sec. 13.39. Hearing.  
Sec. 13.40. Appeal.

## ARTICLE XI. ENFORCEMENT

Sec. 13.41. Enforcement.  
Sec. 13.42. Violations.  
Sec. 13.43. Penalty.  
Sec. 13.44. Injunction.  
Sec. 13.45. Expense.  
Sec. 13.46. Cumulative

## ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation and enforcement of this Chapter.

- a) BOARD shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.
- b) COMMISSARY shall mean any food establishment, including, but not limited to, any place in which food, beverages, food or beverage ingredients, containers, or



supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.

c) **DANGEROUS COMMUNICABLE DISEASE** shall include those diseases which epidemiological evidence indicates can be transmitted through food preparation.

d) **DEPARTMENT** shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or its employees.

e) **FOOD** shall include, but not necessarily be limited to, all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery, or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof or which become components thereof.

f) **FOOD ESTABLISHMENT** shall mean any "food service establishment", "temporary food service establishment", "mobile food service establishment", "food market", "temporary food market", "mobile food market", "food or beverage vending machine", "food processing establishment", "commissary", or any other establishment where food intended for human consumption is manufactured, produced, stored, warehoused, prepared, handled, transported, sold, served or provided with or without charge; provided, however, that when the entire operation of a food establishment is receiving continuous inspection by an appropriate state or federal government agency, including the United State Department of Agriculture Consumer and Marketing Service or the Indiana State Board of Health, it shall not be included in the above definition, except that the Department shall be permitted to enter such food establishment to trace spoiled or defective products that are suspected to be spoiled or defective when the same are discovered in any food establishment.

g) **FOOD HANDLER** shall include, but not necessarily be limited to, any person who may come into contact with food by sale, processing, preparation, packaging, serving, or who comes in contact with any utensil or equipment of any kind used in said process, or who is employed in a room or rooms in which food is being processed, prepared, packaged, served, or sold.

h) **FOOD MARKET** shall mean any food establishment, including, but not limited to, a grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any other food establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of this ordinance shall not include meat or poultry slaughterhouses.

i) **FOOD OR BEVERAGE VENDING MACHINE** shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverage, either in bulk or in package.

j) **FOOD-PROCESSING ESTABLISHMENT** shall mean a commercial establishment in which food is processed or otherwise



prepared, packaged or manufactured for human consumption.

k) **FOOD SERVICE ESTABLISHMENT** shall mean any food establishment, including but not limited to, a restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant, drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public, or non-profit organization or institution routinely serving food, and any other eating or drinking establishment where food or drink is prepared, served or provided for human consumption with or without charge.

l) **HEALTH COMMISSIONER** shall mean the Director of Public Health of the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or his/her authorized representative.

m) **IMMINENT HEALTH HAZARD** shall mean any event, circumstance or situation which in the sole discretion of the Health Commissioner, or his/her authorized representative, presents a serious and present health risk to a person or the public.

n) **MACHINE LOCATION** shall include, but not limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed or operated.

o) **MOBILE FOOD MARKET** shall mean any food establishment capable of being readily moved from location to location where food, intended for human consumption outside of the facility, is stored, sold or offered for sale in prepackaged form, fresh or frozen, at retail or wholesale prices.

p) **MOBILE FOOD SERVICE ESTABLISHMENT** shall mean any food establishment without a fixed location capable of being readily moved intact from location to location by its motorized power unit, or as a trailer, or as a peddled or pushed carrier, or as a tote box.

q) **Operate** and/or its derivatives shall mean the doing or performing of practical work or involving the practical application of principals or processes.

r) **PERMIT** shall mean a certificate and/or a permit number of a size and style previously approved by the Health Commissioner.

s) **PERMITTEE** shall include the person who is the owner of or responsible for the operation of a food establishment which shall include his/her/its authorized representative and who shall be responsible for the acceptance of all notices at the address listed on the application for any permit issued hereunder.

t) **PERSON** shall include, but not be limited to, an individual, a corporation, firm, partnership, proprietorship, association, business organization, municipality or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

u) **POTENTIALLY HAZARDOUS FOOD** shall mean any perishable food that consist in whole or in part of milk or milk products, eggs, meat, poultry, fish, shell fish, edible crustacea, or other ingredients, including synthetic



ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a PH level of four and six-tenths (4.6) or below or a water activity (Aw) value of eighty-five hundredths (0.85) or less under standard conditions or food products in hermetically sealed containers processed to prevent spoilage.

- v) **SAFE TEMPERATURES** as applied to potentially hazardous food shall mean food temperatures at 45 degrees F or below, and 140 degrees F or above, and frozen foods at 0 degrees F or below, provided, however, a tolerance of 5 degrees shall be permitted on frozen foods only.
- w) **TEMPORARY FOOD MARKET** shall mean any food establishment in an enclosure, stall or other facility, whether fixed or mobile, operating at a fixed location on a seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits, vegetables, honey or cider intended for human consumption off the premises are offered for sale at retail or wholesale.
- x) **TEMPORARY FOOD SERVICE ESTABLISHMENT** shall mean any food establishment operating at one site or location for a period of time not in excess of fourteen (14) consecutive calendar days, in connection with a fair, carnival, circus, public exhibition, or any other gathering, whether or not the facility is fixed or movable.
- y) **UTENSIL** shall mean all containers or any equipment of any kind or nature, including, but not necessarily limited to any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.
- z) **VENDING OPERATOR** shall include, but not necessarily be limited to any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more food or beverage vending machines.

## ARTICLE II. PERMITS

### Sec. 13.2. Permit Requirements.

It shall be unlawful for any person to sell any food or to operate a food establishment or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Commissioner, or is otherwise exempted from the provisions of this ordinance.

### Sec. 13.3 Posting.

All permits shall be posted in a conspicuous place in each food establishment. With respect to mobile food service establishment, or mobile food market, the name, address and telephone number of the permittee, shall be conspicuously displayed on each vehicle not less than two (2) inches in height.

### Sec. 13.4. Separate Permits.



A separate permit shall be required for each food establishment and/or vending operator regardless of whether or not they are contained in the same building, where the person owning and/or operating same are not identical. For each kitchen within a food establishment, a separate license shall be obtained and a separate license fee shall be paid.

#### Sec. 13.5. Application/Food Establishment.

The application for a food establishment permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate, the address of the establishment and the number of food handlers employed therein, which shall include the permittee's manager, or other supervisory personnel. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection of the food establishment.

#### Sec. 13.6. Application/Vending Machine.

The application for a vending operator permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate and the number of vending machines intended to be operated. In addition, said application shall specify the location of any commissary or commissaries, the number and type of food or beverage vending machines, the locations maintained by the permittee where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food or beverages to be dispensed through vending machines. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection.

#### Sec. 13.7. Issue.

A permit shall be issued subsequent to application and inspection upon a determination by the Health Commissioner that the permittee has complied with all the applicable provisions of this Chapter, tendered the appropriate permit fee hereinafter specified and obtained the necessary sign off sheets from the appropriate fire and building departments.

#### Sec. 13.8. Term.

- a. The permit for a food service establishment, mobile food service establishment, food market, mobile food market, vending operator, commissary or food processing establishment shall be for a term of one year beginning upon the date of issue.
  1. Said permit shall be renewed annually on or before the 15th day of the anniversary month.
- b. The permit for a temporary food service establishment shall be for a term not to exceed fourteen (14) consecutive calendar days.
- c. The permit for a temporary food market shall be for a



term not to exceed six consecutive calendar months on a seasonal basis.

**Sec. 13.9. Permit not Transferable.**

No permit issued to any permittee under this Chapter shall be transferable.

- a. A new permittee taking over a continuously operating food establishment shall be entitled to a nonrenewable probationary permit.
- b. This probationary permit will be issued at the time the new permittee makes application for an annual food establishment permit and pays all application and permit fees.
- c. The probationary permit will be valid for a period of thirty days, which commences on the date of application, and shall not be subject to any extensions.
- d. The new permittee must obtain its annual permit within the thirty day probationary period or its permit will be revoked until the permittee complies with all annual permit requirements.
- e. The annual permit issued within the thirty day probationary period shall have as its anniversary date, the original date of application for the probationary permit.

**ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION OF FOOD ESTABLISHMENTS AND VENDING MACHINES.**

**Sec. 13.10. Construction, Renovation and Alteration of Food Establishments and Vending Machines.**

All construction, renovation and alteration of food establishments and vending machines shall be as follows:

- a) all food establishments which are hereinafter constructed or renovated shall conform in their construction to the applicable requirements of Article V. of this Ordinance.
- b) no such construction, renovation or alteration shall begin without the construction, renovation or alteration plans being first submitted to and approved by the Health Commissioner. Failure to obtain the Health Commissioner's approval, shall be the basis for the issuance of an immediate stop work order by the Health Commissioner.
- c) all equipment installed in a food establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing or serving of food or drink, shall be of a type conforming with the minimum standards of the National Sanitation Foundation (NSF) or (ETL), or better.
- d) the Health Commissioner may condemn equipment that fails to meet NSF or ETL standards.
- e) all food establishments must fully comply at all times with all local and state building and fire codes. Compliance with the building and fire codes is a pre-



condition to the issuance, reinstatement or renewal of any permit. Failure of any permittee to fully comply with said building and fire codes shall be the basis for the suspension, immediate closure and/or revocation of any permit issued hereunder.

- f) all food establishments involved with the on-sight preparation of food shall be required to install and maintain a food preparation sink which is separate and independent of the other sinks required under 410 IAC 7-15.1 and 7-16.1, as amended.

#### ARTICLE IV. APPLICATION AND/OR PERMIT FEES.

##### Sec. 13.11. Fees.

Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, a fee or fees, which shall be deposited into the City-County Health Fund for each such operation in accordance with the classification as established in the following schedule of fees.

##### Sec. 13.12. Application Fees.

- a) Each new food establishment shall be required to pay a fee for the review of plans, specifications and the initial inspection of the food establishment. This fee is in addition to the permit fee. The application fee shall be based upon the square footage of the building floor area or, in those instances where the food establishment takes up only a portion of the total floor area, the actual square footage of floor area involved with the operation of the food establishment, as follows:

1. Under 3,000 square feet	\$ 75.00
2. 3,001 to 30,000 square feet	150.00
3. 30,001 to 40,000 square feet	225.00
4. 40,001 to 60,000 square feet	300.00
5. 60,001 square feet and over	375.00

- b) Each new permittee of a food establishment which is in existence and has been operating on a continual basis up to the time that the new permittee takes over the ownership or possession of said food establishment shall be required to pay a fee of \$50.00 for the initial inspection of the food establishment. This fee is in addition to the permit fees as set out herein.

##### Sec. 13.13. Permit Fees for Food Service Establishment, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment.

Permit Fees for Food Service Establishments, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment are as follows:

1. 1 through 5 employees	\$ 110.00
2. 6 through 9 employees	150.00
3. 10 through 40 employees	175.00



4.	41 employees and over	200.00
5.	Temporary food service establishments as follows:	
a.	1 to 2 days	15.00
b.	3 to 4 days	30.00
c.	5 to 6 days	45.00
d.	7 to 9 days	60.00
e.	10 to 11 days	75.00
f.	12 to 14 days	90.00
6.	Temporary food market	25.00

**Sec. 13.14. Permit Fees for a Food Market.**

Permit Fees for a Food Market are as follows:  
Square Footage of Floor Area:

1.	Under 3,000 square feet	\$ 90.00
2.	3,000 to 30,000 square feet	180.00
3.	30,001 to 40,000 square feet	265.00
4.	40,001 to 60,000 square feet	355.00
5.	60,001 square feet and over	445.00

**Sec. 13.15. Permit Fees for a Mobile Food Service Establishment and/or Mobile Food Market.**

Permit Fees for a Mobile Food Service Establishment and/or Mobile Food Market with Gross Weight of

1.	Under 1,000 pounds	\$ 110.00
2.	Over 1,000 pounds	170.00

**Sec. 13.16. Permit Fees for a Vending Operator.**

Permit Fees for a Vending Operator are as follows:

1.	One to ten food or beverage vending machines, per machine	\$ 7.50
2.	Eleven to twenty-five machines	112.50
3.	Twenty-six to fifty machines	150.00
4.	Fifty-one to one hundred machines	225.00
5.	One hundred and one to than two hundred machines	300.00
6.	Two hundred and one to three hundred machines	375.00
7.	Three hundred and one or more machines	450.00

**Sec. 13.17. Permit Fee Owned and/or Operated by Any School Corporation.**

The application fee and/or permit fee for any food establishment which is owned and/or operated by any school corporation shall be \$15.00 regardless of any of the above and foregoing.

**Sec. 13.18. Failure to Obtain or Renew Permit.**

Should any permittee fail to obtain the permit prior to the opening of the food establishment for business, or should any permittee fail to renew his permit on or before the anniversary date of said permit, then said annual fee shall be the sum of the annual fee set forth above for that particular food establishment plus 25% of said fee. Nothing in this section shall prevent the Health Commissioner from



exercising any other of his/her rights and/or duties regarding suspension, closure or revocation of the permit.

**Sec. 13.19. Exemption.**

- a. The permit fee provisions of this ordinance shall not apply to any fruit and vegetable stands maintained and operated by a person who sells directly to a consumer, fresh fruits, vegetables, honey or cider grown and sold on lands owned or controlled by him.
- b. The permit fee provisions of this ordinance shall not apply to any food establishments or vending operators which comply with the terms and provisions of I.C. 16-1-20-26, unless they waive said exemption and/or operate more than thirty days in a calendar year and provide food service to persons other than members, guests or students on a regular basis.
  1. Applicants for this exemption shall provide the Health Commission with a copy of its 501(c)(3) status.
- c. Establishments which sell or offer for sale freshly popped popcorn, coffee or prepackaged confections such as candy, chewing gum, nuts, potato chips, pretzels, popcorn, soft drinks, ice, or prepackaged non-readily perishable food or food products in hermetically sealed containers processed to prevent spoilage shall be exempt from the provisions of Articles II. and IV. regarding the necessity for obtaining a permit and/or the payment of any permit fee.
- d. Vending machines which dispense only prepackaged, pre-bottled, non-readily perishable food and beverages shall be exempt from the provisions of this Chapter.

**ARTICLE V. MINIMUM SANITARY REQUIREMENTS**

**Sec. 13.20. Minimum sanitary requirements for food establishments, vending operators, food and beverage vending machines and bed and breakfast inns.**

- a. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as provided in its Regulations 410 IAC 7-15.1 and 7-16.1, as amended.
- b. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall be required to tap into a publicly supplied water system when said system is located within 300 feet of the boundary lines of the real estate upon which said food establishment is located, when said system is adequate to handle an additional tap-in, and when the permittee has direct access to said system or can obtain access to said system by means of easements or other necessary grants of authority. In the case where the permittee does not have direct access to said system, the permittee shall be required to make a diligent and reasonable effort to obtain the necessary easements and/or other grants of authority to obtain access to the system.

**Sec. 13.21. The minimum sanitary requirements for temporary food markets are as follows.**



- a. Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.
- b. All equipment and utensils used in storing and displaying fresh fruits and vegetables shall be sanitized.
- c. Only fresh fruits, honey, cider and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.
- d. All fresh fruits, honey, cider and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such manner as to protect the food from contamination by splash, foot traffic, dust, animals and other means.
- e. Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.
- f. All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.
- g. The Health Commissioner may augment such requirements when he/she may deem it necessary to prevent a condition which may constitute a public health hazard.

**Sec. 13.22 Adoption of Rules and Regulations Established by the Indiana State Board of Health for Bed and Breakfast Inns.**

The rules and regulations established by the Indiana State Board of Health regarding the operation of bed and breakfast inns as set forth in the Indiana Administrative Code are hereby adopted.

**Sec. 13.23. Designation of a "No Smoking" Area.**

The permittee of any food establishment where food is sold for consumption on the premises shall designate a portion of the area where food is consumed as a "no smoking" area. Smoke or smoking means that carrying or holding of a lighted pipe, cigar, cigarette of any kind or any other lighted smoking equipment or the lighting or emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind. The prohibitions, requirements or duties of this section shall not apply to banquet rooms in use for private functions, cocktail lounges or bars, including cocktail lounges and bars within any food establishment.

**ARTICLE VI. HEALTH AND DISEASE CONTROL**

**Sec. 13.24. Infected Persons Prohibited:**

- a. No person, who has a communicable or infectious disease such as an open wound, an acute respiratory infection, vomiting or diarrhea caused by an infection shall work in a food service establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.
- b. No person known or believed to be affected with any such disease or condition shall be employed in such an area or capacity.



- 1  
2 c. If the manager or person in charge of the food  
3 establishment has reason to believe that any employee  
4 has contracted any disease in a communicable form or  
has become a carrier of such disease, he shall notify  
the Health Commissioner immediately.

5 **Sec. 13.25. Procedure When Disease Suspected:**

6 The Health Commissioner may require any or all of the  
7 following measures when he/she has probable cause to  
determine that there exists a reasonable possibility of the  
transmission of disease from any food establishment:

- 8 a. The immediate exclusion of all persons determined to be  
9 possible carriers or transmitters of disease from any  
and all food establishments.
- 10 b. The immediate closure of the affected food  
11 establishment until the Health Commissioner determines  
that no further danger of the disease exists.
- 12 c. The medical examination of any person determined to be  
13 a possible carrier or transmitter of the disease, and  
14 said persons' associates, to such extent as may be  
deemed necessary to satisfy the Health Commissioner  
that the termination or absence of the disease can be  
made to a reasonable medical certainty.

15 **Sec. 13.26. Hand Washing.**

16 Before starting to work, each food handler shall  
17 thoroughly wash his/her hands, arms and fingernails with  
18 soap and warm water and use such other facilities as to  
19 assure good personal hygiene of the hands, arms and  
20 fingernails. Such hand washing must be repeated during  
21 working hours after smoking, after using the restrooms,  
22 after coughing into hands or as often as may be necessary to  
23 remove soil and contamination. The hands and fingernails of  
all food handlers are to be kept out of their hair, nose and  
mouth and are to be kept clean while engaged in handling  
food and food contact services. Except for essential taste  
testing in an approved manner, food handlers are not to  
consume food or beverages during the preparation or serving  
of any food.

24 **ARTICLE VII. SALE, EXAMINATION, CONDEMNATION OF**  
25 **UNWHOLESOME, ADULTERATED OR MISBRANDED**  
**FOOD OR BEVERAGE.**

26 **Sec. 13.27. The Sale of Food or Beverage Which is**  
27 **Unwholesome, Adulterated or Misbranded.**

28 It shall be a violation of this Chapter for any person  
29 to sell through a food establishment, any food or beverage  
30 or substances which is unwholesome, adulterated or  
31 misbranded. Provided, however, that the term "misbranded"  
as used in this Chapter does not mean a meal item, prepared  
to an individual recipe, that is denominated by commonly-  
accepted menu terminology.

32 **Sec. 13.28. Health Commissioner Examination of Food or**  
**Beverage.**

Samples of food, or beverage and other substances may  
be taken and examined by the Health Commissioner as often as  
he may deem necessary to determine freedom from  
unwholesomeness, adulteration or misbranding.



**Sec. 13.29. Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.**

The Health Commissioner may condemn, forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded.

**Sec. 13.30. Public Embargo.**

Whenever the Health Commissioner has probable cause to believe that any food or beverage is adulterated and/or misbranded, he/she shall use the public embargo as outlined in the Indiana Food, Drug and Cosmetic Act, I.C. 16-1-28-22 or 23.

**ARTICLE VIII. EDUCATION**

**Sec. 13.31. Food Handler Education.**

Every person who is employed, or is about to be employed as a food handler, shall be familiar with the requirements of 410 I.A.C. Should a food establishment receive a score on a single inspection below 60, receive a score on two consecutive inspections between 60 and 70, be subjected to an immediate closure by the Health Commissioner or be closed for any other reason by the Health Commissioner, then each food handler employed by said food establishment shall be required to attend a food service educational program given, from time to time, by the Department. The Department shall charge a flat fee of \$100.00 to each food establishment for conducting the food service educational program regardless of whether or not attendance is voluntary or involuntary in nature. A copy of 410 I.A.C. shall be kept on the premises at all times.

**ARTICLE IX. INSPECTIONS**

**Sec. 13.32. Frequency of Inspection.**

Each food establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once each six months, or more frequently if determined necessary by the Health Commissioner.

**Sec. 13.33. Inspection of Temporary Food Service Establishment.**

Each temporary food service establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once in each forty-eight hour period.

**Sec. 13.34. Authority to Inspect and to Copy Records.**

The permittee, shall, upon the request of the Health Commissioner, permit access to all areas of every such food establishment and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment.

**Sec. 13.35. Procedure When Violations Noted:**

- a. If during the inspection of any food establishment the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, he/she shall issue a written order listing



such violations, shall deliver said list to the permittee and shall fix a time within which the permittee shall abate or remedy such violations.

- b. If during the inspection of any temporary food service establishment or temporary food market the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, he/she may order the immediate correction of the violation or order any other action as set forth in this Chapter.
- c. A copy of the written order shall be filed in the records of the Department after appropriate review by supervisory personnel.

# ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE, REVOCATION HEARING AND REINSTATEMENT OF PERMIT

## Sec. 13.36. Suspension of Permit.

The Health Commissioner may order the revocation or suspension of any permit issued for a temporary food service establishment or temporary food market which order shall include the prohibition of any further sale or serving of food or beverage. Upon the issuance of the order, the permit shall automatically be considered revoked, null and void. The Health Commissioner may order the revocation or suspension of the permit for any of the following reasons:

- a. Failure to meet any of the standards or violations of any of the provisions established by this Chapter.
- b. Interference with the Health Commissioner, or his/her authorized representative, in the performance of his/her duties. Interference shall be defined as the process of obstructing, hampering or blocking the Health Commissioner in the performance of his/her duties.
- c. At the request of the permittee, a hearing shall be afforded within twenty-four (24) hours of the issuance of the written suspension order. Said hearing shall be conducted as set forth in Sec 13.38 of this Chapter.

## Sec. 13.37. Immediate Closure.

- a. Notwithstanding any other provisions of this Chapter, whenever the Health Commissioner or his/her authorized representative finds insanitary or other conditions, involving the operation of any food establishment or food or beverage machine operation which, in his/her opinion, constitutes an imminent health hazard, he/she shall, without notice or hearing, issue and serve a written order to the permittee requiring the immediate closure of its operations, shall cite the existence of insanitary condition and shall specify the corrective action to be taken.
- b. Such order shall be effective immediately.
- c. Upon petition to the Health Commissioner, the permittee shall be afforded a hearing as soon as possible.
- d. The Health Commissioner may make a reinspection upon the request of the permittee. When the Health Commissioner determines that the necessary corrective action has been taken, the operation may be resumed.



**Sec. 13.38. Revocation of Permit.**

- a. Any permit issued hereunder may be revoked by the Health Commissioner as a result of the willful or continuous violation of any provision of this Chapter.
- b. No such revocation shall be ordered by the Health Commissioner except after a hearing held upon at least 10 days written notice to the permittee of the time, place and nature thereof.
- c. Such notice shall be served upon the permittee by leaving, or mailing by Certified Mail, the notice to the address listed by the permittee as his/her/its address on the permit application.

**Sec. 13.39. Hearing.**

- a. At any hearing required under this Chapter, every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by counsel. All such hearings shall be conducted in a informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- b. Upon the conclusion of such hearing, the Health Commissioner shall enter a final order determining the issue(s), which shall be conclusive upon all parties, subject to the right to appeal.

**Sec. 13.40. Appeal.**

- a. Any permittee aggrieved by any final order of the Health Commissioner shall be entitled to a review of the final order before the Board by filing a written request therefore with the Secretary of the Board within 15 days after such final order is issued.
- b. Upon the Health Commissioner's receipt of such request, the Board shall hear the matter denovo in open hearing upon at least 10 days written notice of the time, place and nature thereof. The notice shall be issued by the Secretary of the Board to the Health Commissioner and the permittee filing the request.
- c. The notice shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the address listed on the permit application as permittee's address or such other address as permittee shall designate in writing on the request.
- d. At such hearing, the same rules of procedure shall apply as in the case of the hearing before the Health Commissioner; provided, that upon written demand by the permittee, the Board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party.
- e. The expense of such proceedings shall be charged to the permittee who applied for the review, except that copies of transcripts shall be at the expense of the party obtaining the same. The Board may require the permittee to deposit with such application an amount determined by the Board to be necessary to secure such expense.



1 f. The Board shall make written findings of facts and  
2 shall enter its final order or determination of the  
3 matter in writing in the permanent records of the  
4 Board.

5 **ARTICLE XI. ENFORCEMENT**

6 **Sec. 13.41. Enforcement.**

7 It shall be the duty of the Health Commissioner to  
8 enforce the provisions of this Chapter. Any permit issued  
9 in conflict with the provisions of this Chapter shall be  
10 null and void. A violation of an order issued by the Health  
11 Commissioner or Board shall be considered to be a violation  
12 of this Chapter.

13 **Sec. 13.42. Violations.**

14 Whenever the Health Commissioner determines that any  
15 food service establishment, temporary food service  
16 establishment, mobile food service establishment, food  
17 market, temporary food market, vending operator, food  
18 handler or any other person, is in willful violation of any  
19 of the provisions of this Chapter, the Health Commissioner  
20 shall furnish evidence of said willful violation to the  
21 Prosecuting Attorney of Allen County, Indiana or the  
22 attorney for the Board who shall seek all appropriate legal  
23 remedies against the persons violating said provisions of  
24 this Chapter.

25 **Sec. 13.43. Penalty.**

26 Any person who willfully violates any of the provisions  
27 of this Chapter shall be subject to a fine of not more than  
28 \$500.00 for each violation. Each day of the existence of  
29 any violation of this Chapter shall be considered to be a  
30 separate offense.

31 **Sec. 13.44. Injunction.**

32 The Health Commissioner may bring an action for an  
injunction in the Circuit or Superior Court of Allen County,  
Indiana, to restrain any person from violating the  
provisions of this Chapter, to cause such violation to be  
prevented, abated or removed.

**Sec. 13.45. Expense.**

Any person violating any of the provisions of this  
Chapter shall be liable to the Fort Wayne-Allen County Board  
of Public Health for the expense, loss or damage occasioned  
by reason of such violation, including reasonable attorney's  
fees and cost.

**Sec. 13.46. Cumulative.**

The remedies provided in this Chapter shall be  
cumulative, and not exclusive, and shall be in addition to  
any other remedy provided by law.

**SECTION 2.** All ordinances or parts of ordinances  
in conflict herewith are hereby repealed.

The invalidity of any section, clause, sentence or



PAGE 17

provision of this Chapter shall not affect the validity of  
any other part of this Chapter.

SECTION 3. That this Ordinance shall be in full  
force and effect from and after its passage and any and all  
necessary approval by the Mayor and all necessary  
publication.

---

Councilmember

APPROVED AS TO FORM  
AND LEGALITY

---

J. Timothy McCaulay, City Attorney



AN ORDINANCE amending Chapter  
13 of the City of Fort Wayne  
Code of Laws.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Chapter 13 of the City of Fort  
Wayne Code of Laws be amended as follows:

CHAPTER 13. FOOD AND BEVERAGE ESTABLISHMENTS

ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.

Sec. 13.3. Posting.

Sec. 13.4. Separate Permits.

Sec. 13.5. Application/Food Establishment.

Sec. 13.6. Application/Vending Machine.

Sec. 13.7. Issue.

Sec. 13.8. Term.

Sec. 13.9. Permit not Transferable.

ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION  
OF FOOD ESTABLISHMENTS AND VENDING  
MACHINES

Sec. 13.10. Construction, Renovation and Alteration of  
Food Establishments and Vending Machines.

ARTICLE IV. APPLICATION AND/OR PERMIT FEES

Sec. 13.11. Fees.

Sec. 13.12. Application Fees.

Sec. 13.13. Permit Fees for Food Service Establishments,  
Temporary Food Service Establishments,  
Temporary Food Markets, and Food Processing  
Establishments.

Sec. 13.14. Permit Fees for a Food Market.

Sec. 13.15. Permit Fees for a Mobile Food Service  
Establishment and/or Mobile Food Market.

Sec. 13.16. Permit Fees for a Vending Operator.

Sec. 13.17. Permit Fees for Food Establishments Owned or  
Operated by any School Corporation.

Sec. 13.18. Failure to Obtain or Renew Permit.

Sec. 13.19. Exemption.

ARTICLE V. MINIMUM SANITARY REQUIREMENTS

Sec. 13.20. Minimum Sanitary Requirements for Food  
Establishments, Vending Operators, Food and  
Beverage Vending Machines and Bed and  
Breakfast Inns.

Sec. 13.21. The Minimum Sanitary Requirements for  
Temporary Food Markets.

Sec. 13.22 Adoption of Rules and Regulations Established



by the Indiana State Board of Health for Bed  
and Breakfast Inns.

Sec. 13.23. Designation of a "No Smoking" Area.

#### ARTICLE VI. HEALTH AND DISEASE CONTROL

Sec. 13.24. Infected Persons Prohibited.

Sec. 13.25. Procedure When Disease Suspected.

Sec. 13.26. Hand Washing.

#### ARTICLE VII. SALE, EXAMINATION, CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD OR BEVERAGE

Sec. 13.27. Sale of Food or Beverage which is  
Unwholesome, Adulterated or Misbranded.

Sec. 13.28. Health Commissioner Examination of Food or  
Beverage.

Sec. 13.29. Condemnation by Health Commissioner of  
Unwholesome, Adulterated or Misbranded Food  
or Beverage.

Sec. 13.30. Public Embargo.

#### ARTICLE VIII. EDUCATION

Sec. 13.31. Food Handler Education.

#### ARTICLE IX. INSPECTIONS

Sec. 13.32. Frequency of Inspection.

Sec. 13.33. Inspection of Temporary Food Service  
Establishment.

Sec. 13.34. Authority to Inspect and to Copy Record.

Sec. 13.35. Procedure When Violations Noted.

#### ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE, REVOCATION HEARING AND REINSTATEMENT OF PERMIT.

Sec. 13.36. Suspension of Permit.

Sec. 13.37. Immediate Closure.

Sec. 13.38. Revocation of Permit.

Sec. 13.39. Hearing.

Sec. 13.40. Appeal.

#### ARTICLE XI. ENFORCEMENT

Sec. 13.41. Enforcement.

Sec. 13.42. Violations.

Sec. 13.43. Penalty.

Sec. 13.44. Injunction.

Sec. 13.45. Expense.

Sec. 13.46. Cumulative

#### ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

Unless the context specifically indicates otherwise,  
the following definitions shall apply in the interpretation  
and enforcement of this Chapter.

a) BOARD shall mean the Fort Wayne-Allen County Department  
of Public Health of Fort Wayne, Allen County, Indiana.



- 1       b)   **COMMISSARY** shall mean any food establishment,  
2       including, but not limited to, any place in which food,  
3       beverages, food or beverage ingredients, containers, or  
4       supplies are kept, handled, prepared or stored for the  
5       purpose of directly supplying food or beverage vending  
6       machines.
- 7       c)   **DANGEROUS COMMUNICABLE DISEASE** shall include those  
8       diseases which epidemiological evidence indicates can  
9       be transmitted through food preparation.
- 10      d)   **DEPARTMENT** shall mean the Fort Wayne-Allen County  
11      Department of Public Health of Fort Wayne, Allen  
12      County, Indiana, and/or its employees.
- 13      e)   **FOOD** shall include, but not necessarily be limited to,  
14      all raw, cooked or processed edible substances which  
15      may be used in whole or in part for human consumption,  
16      whether solid or liquid, packaged or unpackaged,  
17      confectionery, or condiment, whether simple, mixed or  
18      compound, and all substances or ingredients used in the  
19      preparation thereof or which become components thereof.
- 20      f)   **FOOD ESTABLISHMENT** shall mean any "food service  
21      establishment", "temporary food service establishment",  
22      "mobile food service establishment", "food market",  
23      "temporary food market", "mobile food market", "food or  
24      beverage vending machine", "food processing  
25      establishment", "commissary", or any other  
26      establishment where food intended for human consumption  
27      is manufactured, produced, stored, warehoused,  
28      prepared, handled, transported, sold, served or  
29      provided with or without charge; provided, however,  
30      that when the entire operation of a food establishment  
31      is receiving continuous inspection by an appropriate  
32      state or federal government agency, including the  
    United State Department of Agriculture Consumer and  
    Marketing Service or the Indiana State Board of Health,  
    it shall not be included in the above definition,  
    except that the Department shall be permitted to enter  
    such food establishment to trace spoiled or defective  
    products that are suspected to be spoiled or defective  
    when the same are discovered in any food establishment.
- g)   **FOOD HANDLER** shall include, but not necessarily be  
    limited to, any person who may come into contact with  
    food by sale, processing, preparation, packaging,  
    serving, or who comes in contact with any utensil or  
    equipment of any kind used in said process, or who is  
    employed in a room or rooms in which food is being  
    processed, prepared, packaged, served, or sold.
- h)   **FOOD MARKET** shall mean any food establishment,  
    including, but not limited to, a grocery, meat market,  
    poultry market, fish market, fresh fruit and vegetable  
    market, delicatessen, confectionery, candy kitchen, nut  
    store, retail bakery store, or any other food  
    establishment, whether fixed or movable, where food,  
    intended for human consumption off the premises, is  
    manufactured, produced, stored, prepared, handled, sold  
    or offered for sale at retail or wholesale. Provided,  
    however, that the provisions of this ordinance shall  
    not include meat or poultry slaughterhouses.
- i)   **FOOD OR BEVERAGE VENDING MACHINE** shall mean any self-  
    service device offered for public use which, upon  
    insertion of paper money, coins or tokens, or by other  
    similar means, dispenses unit servings of food or  
    beverage, either in bulk or in package.



- 1 j) **FOOD-PROCESSING ESTABLISHMENT** shall mean a commercial  
2 establishment in which food is processed or otherwise  
3 prepared, packaged or manufactured for human  
4 consumption.
- 5 k) **FOOD SERVICE ESTABLISHMENT** shall mean any food  
6 establishment, including but not limited to, a  
7 restaurant, coffee shop, cafeteria, short-order cafe,  
8 luncheonette, tavern, sandwich stand, soda fountain,  
9 commissary, drive-in restaurant, drink establishment,  
10 snack bar, food counter, dining room, food catering,  
11 industrial feeding establishment, private, public, or  
12 non-profit organization or institution routinely  
13 serving food, and any other eating or drinking  
14 establishment where food or drink is prepared, served  
15 or provided for human consumption with or without  
16 charge.
- 17 l) **HEALTH COMMISSIONER** shall mean the Director of Public  
18 Health of the Fort Wayne-Allen County Department of  
19 Public Health of Fort Wayne, Allen County, Indiana,  
20 and/or her authorized representative.
- 21 m) **IMMINENT HEALTH HAZARD** shall mean any event,  
22 circumstance or situation which in the sole discretion  
23 of the Health Commissioner, or her authorized  
24 representative, presents a serious and present health  
25 risk to a person or the public.
- 26 n) **MACHINE LOCATION** shall include, but not limited to, any  
27 room, enclosure, space or area where one or more food  
28 or beverage vending machines are installed or operated.
- 29 o) **MOBILE FOOD MARKET** shall mean any food establishment  
30 capable of being readily moved from location to  
31 location where food, intended for human consumption  
32 outside of the facility, is stored, sold or offered for  
sale in prepackaged form, fresh or frozen, at retail or  
wholesale prices.
- 33 p) **MOBILE FOOD SERVICE ESTABLISHMENT** shall mean any food  
establishment without a fixed location capable of being  
readily moved intact from location to location by its  
motorized power unit, or as a trailer, or as a peddled  
or pushed carrier, or as a tote box.
- 34 q) **Operate** and/or its derivatives shall mean the doing or  
performing of practical work or involving the practical  
application of principals or processes.
- 35 r) **PERMIT** shall mean a certificate and/or a permit number  
of a size and style previously approved by the Health  
Commissioner.
- 36 s) **PERMITTEE** shall include the person who is the owner of  
or responsible for the operation of a food  
establishment which shall include his/her/its  
authorized representative and who shall be responsible  
for the acceptance of all notices at the address listed  
on the application for any permit issued hereunder.
- 37 t) **PERSON** shall include, but not be limited to, an  
individual, a corporation, firm, partnership,  
proprietorship, association, business organization,  
municipality or any other group acting as a unit, as  
well as an individual, trust or estate, or the agent or  
legal representative thereof.
- 38 u) **POTENTIALLY HAZARDOUS FOOD** shall mean any perishable  
food that consist in whole or in part of milk or milk



products, eggs, meat, poultry, fish, shell fish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a PH level of four and six-tenths (4.6) or below or a water activity (Aw) value of eighty-five hundredths (0.85) or less under standard conditions or food products in hermetically sealed containers processed to prevent spoilage.

- v) **SAFE TEMPERATURES** as applied to potentially hazardous food shall mean food temperatures at 45 degrees F or below, and 140 degrees F or above, and frozen foods at 0 degrees F or below, provided, however, a tolerance of 5 degrees shall be permitted on frozen foods only.
- w) **TEMPORARY FOOD MARKET** shall mean any food establishment in an enclosure, stall or other facility, whether fixed or mobile, operating at a fixed location on a seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits, vegetables, honey or cider intended for human consumption off the premises are offered for sale at retail or wholesale.
- x) **TEMPORARY FOOD SERVICE ESTABLISHMENT** shall mean any food establishment operating at one site or location for a period of time not in excess of fourteen (14) consecutive calendar days, in connection with a fair, carnival, circus, public exhibition, or any other gathering, whether or not the facility is fixed or movable.
- y) **UTENSIL** shall mean all containers or any equipment of any kind or nature, including, but not necessarily limited to any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.
- z) **VENDING OPERATOR** shall include, but not necessarily be limited to any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more food or beverage vending machines.

## ARTICLE II. PERMITS

### Sec. 13.2. Permit Requirements.

It shall be unlawful for any person to sell any food or to operate a food establishment or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Commissioner, or is otherwise exempted from the provisions of this ordinance.

### Sec. 13.3 Posting.

All permits shall be posted in a conspicuous place in each food establishment. With respect to mobile food service establishment, or mobile food market, the name, address and telephone number of the permittee, shall be conspicuously displayed on each vehicle not less than two (2) inches in height.



**Sec. 13.4. Separate Permits.**

A separate permit shall be required for each food establishment and/or vending operator regardless of whether or not they are contained in the same building, where the person owning and/or operating same are not identical. For each kitchen within a food establishment, a separate license shall be obtained and a separate license fee shall be paid.

**Sec. 13.5. Application/Food Establishment.**

The application for a food establishment permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate, the address of the establishment and the number of food handlers employed therein, which shall include the permittee's manager, or other supervisory personnel. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection of the food establishment.

**Sec. 13.6. Application/Vending Machine.**

The application for a vending operator permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate and the number of vending machines intended to be operated. In addition, said application shall specify the location of any commissary or commissaries, the number and type of food or beverage vending machines, the locations maintained by the permittee where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food or beverages to be dispensed through vending machines. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection.

**Sec. 13.7. Issue.**

A permit shall be issued subsequent to application and inspection upon a determination by the Health Commissioner that the permittee has complied with all the applicable provisions of this Chapter, tendered the appropriate permit fee hereinafter specified and obtained the necessary sign off sheets from the appropriate fire and building departments.

**Sec. 13.8. Term.**

a. The permit for a food service establishment, mobile food service establishment, food market, mobile food market, vending operator, commissary or food processing establishment shall be for a term of one year beginning upon the date of issue.

1. Said permit shall be renewed annually on or before the 15th day of the anniversary month.

b. The permit for a temporary food service establishment shall be for a term not to exceed fourteen (14) consecutive calendar days.



- 1 c. The permit for a temporary food market shall be for a  
2 term not to exceed six consecutive calendar months on a  
3 seasonal basis.

4 **Sec. 13.9. Permit not Transferable.**

5 No permit issued to any permittee under this Chapter  
6 shall be transferable.

- 7 a. A new permittee taking over a continuously operating  
8 food establishment shall be entitled to a nonrenewable  
9 probationary permit.
- 10 b. This probationary permit will be issued at the time the  
11 new permittee makes application for an annual food  
12 establishment permit and pays all application and  
13 permit fees.
- 14 c. The probationary permit will be valid for a period of  
15 thirty days, which commences on the date of  
16 application, and shall not be subject to any  
17 extensions.
- 18 d. The new permittee must obtain its annual permit within  
19 the thirty day probationary period or its permit will  
20 be revoked until the permittee complies with all annual  
21 permit requirements.
- 22 e. The annual permit issued within the thirty day  
23 probationary period shall have as its anniversary date,  
24 the original date of application for the probationary  
25 permit.

26 **ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION**  
27 **OF FOOD ESTABLISHMENTS AND VENDING**  
28 **MACHINES.**

29 **Sec. 13.10. Construction, Renovation and Alteration of Food**  
30 **Establishments and Vending Machines.**

31 All construction, renovation and alteration of food  
32 establishments and vending machines shall be as follows:

- 33 a) all food establishments which are hereinafter  
34 constructed or renovated shall conform in their  
35 construction to the applicable requirements of Article  
36 V. of this Ordinance.
- 37 b) no such construction, renovation or alteration shall  
38 begin without the construction, renovation or  
39 alteration plans being first submitted to and approved  
40 by the Health Commissioner. Failure to obtain the  
41 Health Commissioner's approval, shall be the basis for  
42 the issuance of an immediate stop work order by the  
43 Health Commissioner.
- 44 c) all equipment installed in a food establishment for use  
45 in the cleansing and bactericidal treatment of  
46 utensils, or in the preparation, storing, handling,  
47 cleaning, sanitizing or serving of food or drink, shall  
48 be of a type conforming with the minimum standards of  
49 the National Sanitation Foundation (NSF) or (ETL), or  
50 better.
- 51 d) the Health Commissioner may condemn equipment that  
52 fails to meet NSF or ETL standards.
- 53 e) all food establishments must fully comply at all times  
54 with all local and state building and fire codes.



Compliance with the building and fire codes is a pre-condition to the issuance, reinstatement or renewal of any permit. Failure of any permittee to fully comply with said building and fire codes shall be the basis for the suspension, immediate closure and/or revocation of any permit issued hereunder.

- f) all food establishments involved with the on-sight preparation of food shall be required to install and maintain a food preparation sink which is separate and independent of the other sinks required under 410 IAC 7-15.1 and 7-16.1, as amended.

#### ARTICLE IV. APPLICATION AND/OR PERMIT FEES.

##### Sec. 13.11. Fees.

Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, a fee or fees, which shall be deposited into the City-County Health Fund for each such operation in accordance with the classification as established in the following schedule of fees.

##### Sec. 13.12. Application Fees.

- a) Each new food establishment shall be required to pay a fee for the review of plans, specifications and the initial inspection of the food establishment. This fee is in addition to the permit fee. The application fee shall be based upon the square footage of the building floor area or, in those instances where the food establishment takes up only a portion of the total floor area, the actual square footage of floor area involved with the operation of the food establishment, as follows:

1. Under 3,000 square feet	\$ 75.00
2. 3,001 to 30,000 square feet	150.00
3. 30,001 to 40,000 square feet	225.00
4. 40,001 to 60,000 square feet	300.00
5. 60,001 square feet and over	375.00

- b) Each new permittee of a food establishment which is in existence and has been operating on a continual basis up to the time that the new permittee takes over the ownership or possession of said food establishment shall be required to pay a fee of \$50.00 for the initial inspection of the food establishment. This fee is in addition to the permit fees as set out herein.

##### Sec. 13.13. Permit Fees for Food Service Establishment, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment.

Permit Fees for Food Service Establishments, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment are as follows:

1. 1 through 5 employees	\$ 110.00
2. 6 through 9 employees	150.00



3.	10 through 40 employees	175.00
4.	41 employees and over	200.00
5.	Temporary food service establishments as follows:	
a.	1 to 2 days	15.00
b.	3 to 4 days	30.00
c.	5 to 6 days	45.00
d.	7 to 9 days	60.00
e.	10 to 11 days	75.00
f.	12 to 14 days	90.00
6.	Temporary food market	25.00

**Sec. 13.14. Permit Fees for a Food Market.**

Permit Fees for a Food Market are as follows:  
Square Footage of Floor Area:

1.	Under 3,000 square feet	\$ 90.00
2.	3,000 to 30,000 square feet	180.00
3.	30,001 to 40,000 square feet	265.00
4.	40,001 to 60,000 square feet	355.00
5.	60,001 square feet and over	445.00

**Sec. 13.15. Permit Fees for a Mobile Food Service Establishment and/or Mobile Food Market.**

Permit Fees for a Mobile Food Service Establishment and/or Mobile Food Market with Gross Weight of

1.	Under 1,000 pounds	\$ 110.00
2.	Over 1,000 pounds	170.00

**Sec. 13.16. Permit Fees for a Vending Operator.**

Permit Fees for a Vending Operator are as follows:

1.	One to ten food or beverage vending machines, per machine	\$ 7.50
2.	Eleven to twenty-five machines	112.50
3.	Twenty-six to fifty machines	150.00
4.	Fifty-one to one hundred machines	225.00
5.	One hundred and one to than two hundred machines	300.00
6.	Two hundred and one to three hundred machines	375.00
7.	Three hundred and one or more machines	450.00

**Sec. 13.17. Permit Fee Owned and/or Operated by Any School Corporation.**

The application fee and/or permit fee for any food establishment which is owned and/or operated by any school corporation shall be \$15.00 regardless of any of the above and foregoing.

**Sec. 13.18. Failure to Obtain or Renew Permit.**

Should any permittee fail to obtain the permit prior to the opening of the food establishment for business, or should any permittee fail to renew his permit on or before the anniversary date of said permit, then said annual fee shall be the sum of the annual fee set forth above for that particular food establishment plus 25% of said fee. Nothing



in this section shall prevent the Health Commissioner from exercising any other of her rights and/or duties regarding suspension, closure or revocation of the permit.

**Sec. 13.19. Exemption.**

- a. The permit fee provisions of this ordinance shall not apply to any fruit and vegetable stands maintained and operated by a person who sells directly to a consumer, fresh fruits, vegetables, honey or cider grown and sold on lands owned or controlled by him.
- b. The permit fee provisions of this ordinance shall not apply to any food establishments or vending operators which comply with the terms and provisions of I.C. 16-1-20-26, unless they waive said exemption and/or operate more than thirty days in a calendar year and provide food service to persons other than members, guests or students on a regular basis.
  1. Applicants for this exemption shall provide the Health Commission with a copy of its 501(c)(3) status.
- c. Establishments which sell or offer for sale freshly popped popcorn, coffee or prepackaged confections such as candy, chewing gum, nuts, potato chips, pretzels, popcorn, soft drinks, ice, or prepackaged non-readily perishable food or food products in hermetically sealed containers processed to prevent spoilage shall be exempt from the provisions of Articles II. and IV. regarding the necessity for obtaining a permit and/or the payment of any permit fee.
- d. Vending machines which dispense only prepackaged, pre-bottled, non-readily perishable food and beverages shall be exempt from the provisions of this Chapter.

**ARTICLE V. MINIMUM SANITARY REQUIREMENTS**

**Sec. 13.20. Minimum sanitary requirements for food establishments, vending operators, food and beverage vending machines and bed and breakfast inns.**

- a. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as provided in its Regulations 410 IAC 7-15.1 and 7-16.1, as amended.
- b. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall be required to tap into a publicly supplied water system when said system is located within 300 feet of the boundary lines of the real estate upon which said food establishment is located, when said system is adequate to handle an additional tap-in, and when the permittee has direct access to said system or can obtain access to said system by means of easements or other necessary grants of authority. In the case where the permittee does not have direct access to said system, the permittee shall be required to make a diligent and reasonable effort to obtain the necessary easements and/or other grants of authority to obtain access to the system.



Sec. 13.21. The minimum sanitary requirements for temporary food markets are as follows.

- a. Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.
- b. All equipment and utensils used in storing and displaying fresh fruits and vegetables shall be sanitized.
- c. Only fresh fruits, honey, cider and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.
- d. All fresh fruits, honey, cider and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such manner as to protect the food from contamination by splash, foot traffic, dust, animals and other means.
- e. Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.
- f. All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.
- g. The Health Commissioner may augment such requirements when she may deem it necessary to prevent a condition which may constitute a public health hazard.

Sec. 13.22 Adoption of Rules and Regulations Established by the Indiana State Board of Health for Bed and Breakfast Inns.

The rules and regulations established by the Indiana State Board of Health regarding the operation of bed and breakfast inns as set forth in the Indiana Administrative Code are hereby adopted.

Sec. 13.23. Designation of a "No Smoking" Area.

The permittee of any food establishment where food is sold for consumption on the premises shall designate a portion of the area where food is consumed as a "no smoking" area. Smoke or smoking means that carrying or holding of a lighted pipe, cigar, cigarette of any kind or any other lighted smoking equipment or the lighting or emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind. The prohibitions, requirements or duties of this section shall not apply to banquet rooms in use for private functions, cocktail lounges or bars, including cocktail lounges and bars within any food establishment.

#### ARTICLE VI. HEALTH AND DISEASE CONTROL

Sec. 13.24. Infected Persons Prohibited:

- a. No person, who has a communicable or infectious disease such as an open wound, an acute respiratory infection, vomiting or diarrhea caused by an infection shall work in a food service establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.



- 1 b. No person known or believed to be affected with any  
2 such disease or condition shall be employed in such an  
3 area or capacity.  
4 c. If the manager or person in charge of the food  
5 establishment has reason to believe that any employee  
6 has contracted any disease in a communicable form or  
7 has become a carrier of such disease, he shall notify  
8 the Health Commissioner immediately.

9 **Sec. 13.25. Procedure When Disease Suspected:**

10 The Health Commissioner may require any or all of the  
11 following measures when she has probable cause to determine  
12 that there exists a reasonable possibility of the  
13 transmission of disease from any food establishment:

- 14 a. The immediate exclusion of all persons determined to be  
15 possible carriers or transmitters of disease from any  
16 and all food establishments.  
17 b. The immediate closure of the affected food  
18 establishment until the Health Commissioner determines  
19 that no further danger of the disease exists.  
20 c. The medical examination of any person determined to be  
21 a possible carrier or transmitter of the disease, and  
22 said persons' associates, to such extent as may be  
23 deemed necessary to satisfy the Health Commissioner  
24 that the termination or absence of the disease can be  
25 made to a reasonable medical certainty.

26 **Sec. 13.26. Hand Washing.**

27 Before starting to work, each food handler shall  
28 thoroughly wash his/her hands, arms and fingernails with  
29 soap and warm water and use such other facilities as to  
30 assure good personal hygiene of the hands, arms and  
31 fingernails. Such hand washing must be repeated during  
32 working hours after smoking, after using the restrooms,  
33 after coughing into hands or as often as may be necessary to  
34 remove soil and contamination. The hands and fingernails of  
35 all food handlers are to be kept out of their hair, nose and  
36 mouth and are to be kept clean while engaged in handling  
37 food and food contact services. Except for essential taste  
38 testing in an approved manner, food handlers are not to  
39 consume food or beverages during the preparation or serving  
40 of any food.

41 **ARTICLE VII. SALE, EXAMINATION, CONDEMNATION OF**  
42 **UNWHOLESOME, ADULTERATED OR MISBRANDED**  
43 **FOOD OR BEVERAGE.**

44 **Sec. 13.27. The Sale of Food or Beverage Which is**  
45 **Unwholesome, Adulterated or Misbranded.**

46 It shall be a violation of this Chapter for any person  
47 to sell through a food establishment, any food or beverage  
48 or substances which is unwholesome, adulterated or  
49 misbranded. Provided, however, that the term "misbranded"  
50 as used in this Chapter does not mean a meal item, prepared  
51 to an individual recipe, that is denominated by commonly-  
52 accepted menu terminology.

53 **Sec. 13.28. Health Commissioner Examination of Food or**  
54 **Beverage.**

55 Samples of food, or beverage and other substances may  
56 be taken and examined by the Health Commissioner as often as



he may deem necessary to determine freedom from unwholesomeness, adulteration or misbranding.

**Sec. 13.29. Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.**

The Health Commissioner may condemn, forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded.

**Sec. 13.30. Public Embargo.**

Whenever the Health Commissioner has probable cause to believe that any food or beverage is adulterated and/or misbranded, she shall use the public embargo as outlined in the Indiana Food, Drug and Cosmetic Act, I.C. 16-1-28-22 or 23.

**ARTICLE VIII. EDUCATION**

**Sec. 13.31. Food Handler Education.**

Every person who is employed, or is about to be employed as a food handler, shall be familiar with the requirements of 410 I.A.C. Should a food establishment receive a score on a single inspection below 60, receive a score on two consecutive inspections between 60 and 70, be subjected to an immediate closure by the Health Commissioner or be closed for any other reason by the Health Commissioner, then each food handler employed by said food establishment shall be required to attend a food service educational program given, from time to time, by the Department. The Department shall charge a flat fee of \$100.00 to each food establishment for conducting the food service educational program regardless of whether or not attendance is voluntary or involuntary in nature. A copy of 410 I.A.C. shall be kept on the premises at all times.

**ARTICLE IX. INSPECTIONS**

**Sec. 13.32. Frequency of Inspection.**

Each food establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once each six months, or more frequently if determined necessary by the Health Commissioner.

**Sec. 13.33. Inspection of Temporary Food Service Establishment.**

Each temporary food service establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once in each forty-eight hour period.

**Sec. 13.34. Authority to Inspect and to Copy Records.**

The permittee, shall, upon the request of the Health Commissioner, permit access to all areas of every such food establishment and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment.

**Sec. 13.35. Procedure When Violations Noted:**



- a. If during the inspection of any food establishment the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, she shall issue a written order listing such violations, shall deliver said list to the permittee and shall fix a time within which the permittee shall abate or remedy such violations.
- b. If during the inspection of any temporary food service establishment or temporary food market the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, she may order the immediate correction of the violation or order any other action as set forth in this Chapter.
- c. A copy of the written order shall be filed in the records of the Department after appropriate review by supervisory personnel.

ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE,  
REVOCATION HEARING AND  
REINSTATEMENT OF PERMIT

Sec. 13.36. Suspension of Permit.

The Health Commissioner may order the revocation or suspension of any permit issued for a temporary food service establishment or temporary food market which order shall include the prohibition of any further sale or serving of food or beverage. Upon the issuance of the order, the permit shall automatically be considered revoked, null and void. The Health Commissioner may order the revocation or suspension of the permit for any of the following reasons:

- a. Failure to meet any of the standards or violations of any of the provisions established by this Chapter.
- b. Interference with the Health Commissioner, or her authorized representative, in the performance of her duties. Interference shall be defined as the process of obstructing, hampering or blocking the Health Commissioner in the performance of her duties.
- c. At the request of the permittee, a hearing shall be afforded within twenty-four (24) hours of the issuance of the written suspension order. Said hearing shall be conducted as set forth in Sec 13.38 of this Chapter.

Sec. 13.37. Immediate Closure.

- a. Notwithstanding any other provisions of this Chapter, whenever the Health Commissioner or her authorized representative finds insanitary or other conditions, involving the operation of any food establishment or food or beverage machine operation which, in her opinion, constitutes an imminent health hazard, she shall, without notice or hearing, issue and serve a written order to the permittee requiring the immediate closure of its operations, shall cite the existence of insanitary condition and shall specify the corrective action to be taken.
- b. Such order shall be effective immediately.
- c. Upon petition to the Health Commissioner, the permittee shall be afforded a hearing as soon as possible.
- d. The Health Commissioner may make a reinspection upon the request of the permittee. When the Health



Commissioner determines that the necessary corrective action has been taken, the operation may be resumed.

**Sec. 13.38. Revocation of Permit.**

- a. Any permit issued hereunder may be revoked by the Health Commissioner as a result of the willful or continuous violation of any provision of this Chapter.
- b. No such revocation shall be ordered by the Health Commissioner except after a hearing held upon at least 10 days written notice to the permittee of the time, place and nature thereof.
- c. Such notice shall be served upon the permittee by leaving, or mailing by Certified Mail, the notice to the address listed by the permittee as his/her/its address on the permit application.

**Sec. 13.39. Hearing.**

- a. At any hearing required under this Chapter, every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by counsel. All such hearings shall be conducted in a informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- b. Upon the conclusion of such hearing, the Health Commissioner shall enter a final order determining the issue(s), which shall be conclusive upon all parties, subject to the right to appeal.

**Sec. 13.40. Appeal.**

- a. Any permittee aggrieved by any final order of the Health Commissioner shall be entitled to a review of the final order before the Board by filing a written request therefore with the Secretary of the Board within 15 days after such final order is issued.
- b. Upon the Health Commissioner's receipt of such request, the Board shall hear the matter denovo in open hearing upon at least 10 days written notice of the time, place and nature thereof. The notice shall be issued by the Secretary of the Board to the Health Commissioner and the permittee filing the request.
- c. The notice shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the address listed on the permit application as permittee's address or such other address as permittee shall designate in writing on the request.
- d. At such hearing, the same rules of procedure shall apply as in the case of the hearing before the Health Commissioner; provided, that upon written demand by the permittee, the Board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party.
- e. The expense of such proceedings shall be charged to the permittee who applied for the review, except that copies of transcripts shall be at the expense of the party obtaining the same. The Board may require the permittee to deposit with such application an amount



determined by the Board to be necessary to secure such expense.

- f. The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing in the permanent records of the Board.

## ARTICLE XI. ENFORCEMENT

### Sec. 13.41. Enforcement.

It shall be the duty of the Health Commissioner to enforce the provisions of this Chapter. Any permit issued in conflict with the provisions of this Chapter shall be null and void. A violation of an order issued by the Health Commissioner or Board shall be considered to be a violation of this Chapter.

### Sec. 13.42. Violations.

Whenever the Health Commissioner determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person, is in willful violation of any of the provisions of this Chapter, the Health Commissioner shall furnish evidence of said willful violation to the Prosecuting Attorney of Allen County, Indiana or the attorney for the Board who shall seek all appropriate legal remedies against the persons violating said provisions of this Chapter.

### Sec. 13.43. Penalty.

Any person who willfully violates any of the provisions of this Chapter shall be subject to a fine of not more than \$500.00 for each violation. Each day of the existence of any violation of this Chapter shall be considered to be a separate offense.

### Sec. 13.44. Injunction.

The Health Commissioner may bring an action for an injunction in the Circuit or Superior Court of Allen County, Indiana, to restrain any person from violating the provisions of this Chapter, to cause such violation to be prevented, abated or removed.

### Sec. 13.45. Expense.

Any person violating any of the provisions of this Chapter shall be liable to the Fort Wayne-Allen County Board of Public Health for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and cost.

### Sec. 13.46. Cumulative.

The remedies provided in this Chapter shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.



**PAGE 17**

The invalidity of any section, clause, sentence or provision of this Chapter shall not affect the validity of any other part of this Chapter.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor and all necessary publication.

Councilmember

APPROVED AS TO FORM  
AND LEGALITY

J. Timothy McCaulay, City Attorney



AN ORDINANCE amending Chapter  
13 of the City of Fort Wayne  
Code of Laws.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Chapter 13 of the City of Fort  
Wayne Code of Laws be amended as follows:

CHAPTER 13. FOOD AND FOOD AND BEVERAGE ESTABLISHMENTS

ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.

Sec. 13.3. Posting.

Sec. 13.4. Separate Permits.

Sec. 13.5. Application/Food Establishment.

Sec. 13.6. Application/Vending Machine.

Sec. 13.7. Issuance of Permit.

Sec. 13.8. Term.

Sec. 13.9. Permit not Transferable.

ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION  
OF FOOD ESTABLISHMENTS AND VENDING  
MACHINES

Sec. 13.10. Construction, Renovation and Alteration of  
Food Establishments and Vending Machines.

ARTICLE IV. APPLICATION AND/OR PERMIT FEES

Sec. 13.11. Fees.

Sec. 13.12. Application Fees.

Sec. 13.13. Permit Fees for Food Service Establishments,  
Temporary Food Service Establishments,  
Temporary Food Markets, and Food Processing  
Establishments.

Sec. 13.14. Permit Fees for a Food Market.

Sec. 13.15. Permit Fees for a Mobile Food Service  
Establishment and/or Mobile Food Market.

Sec. 13.16. Permit Fees for a Vending Operator.

Sec. 13.17. Permit Fees for Food Establishments Owned or  
Operated by any School Corporation.

Sec. 13.18. Failure to Obtain a Permit.

Sec. 13.19. Exemption.

ARTICLE V. SANITARY REQUIREMENTS

Sec. 13.20. Minimum Sanitary Requirements for Food  
Establishments, Vending Operators, Food and  
Beverage Vending Machines and Bed and  
Breakfast Inns.

ARTICLE VI. HEALTH AND DISEASE CONTROL

Sec. 13.21. Infected Persons Prohibited.

Sec. 13.22. Procedure When Disease Suspected.

Sec. 13.23. Hand Washing.



ARTICLE VII. SALE, EXAMINATION, CONDEMNATION OF  
UNWHOLESOME, ADULTERATED OR  
MISBRANDED FOOD OR BEVERAGE

- Sec. 13.24. Sale of Food or Beverage which is Unwholesome, Adulterated or Misbranded.  
Sec. 13.25. Examination of Food or Beverage by the Health Commissioner.  
Sec. 13.26. Condemnation, Destruction of Unwholesome, Adulterated or Misbranded Food or Beverage.  
Sec. 13.27. Probable Cause.

ARTICLE VIII. EDUCATION

- Sec. 13.28. Food Handler Education.

ARTICLE IX. INSPECTIONS

- Sec. 13.29. Frequency of Inspection.  
Sec. 13.30. Inspection of Temporary Food Service Establishment.  
Sec. 13.31. Authority to Inspect and to Copy Record.  
Sec. 13.32. Procedure When Violations Noted.

ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE, REVOCATION  
HEARING AND REINSTATEMENT OF PERMIT.

- Sec. 13.33. Suspension of Permit.  
Sec. 13.34. Immediate Closure.  
Sec. 13.35. Revocation of Permit.  
Sec. 13.36. Hearing.  
Sec. 13.37. Appeal.

ARTICLE XI. ENFORCEMENT

- Sec. 13.38. Enforcement.  
Sec. 13.39. Violations.  
Sec. 13.40. Penalty.  
Sec. 13.41. Injunction.  
Sec. 13.42. Expense.  
Sec. 13.43. Cumulative

ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation and enforcement of this Chapter.

- a) BOARD shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.  
b) COMMISSARY shall mean any food establishment, including, but not limited to, any place in which food, beverages, food or beverage ingredients, containers, or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.  
c) DANGEROUS COMMUNICABLE DISEASE shall include those diseases which epidemiological evidence indicates can be transmitted through food preparation.  
d) DEPARTMENT shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or its employees.



- e) **FOOD** shall include, but not necessarily be limited to, all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery, or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof or which become components thereof.
- f) **FOOD ESTABLISHMENT** shall mean any "food service establishment", "temporary food service establishment", "mobile food service establishment", "food market", "temporary food market", "mobile food market", "food or beverage vending machine", "food processing establishment", "commissary", or any other establishment where food intended for human consumption is manufactured, produced, stored, warehoused, prepared, handled, transported, sold, served or provided with or without charge; provided, however, that when the entire operation of a food establishment is receiving continuous inspection by an appropriate state or federal government agency, including the United State Department of Agriculture Consumer and Marketing Service or the Indiana State Board of Health, it shall not be included in the above definition, except that the Department shall be permitted to enter such food establishment to trace spoiled or defective products that are suspected to be spoiled or defective when the same are discovered in any food establishment.
- g) **FOOD HANDLER** shall include, but not necessarily be limited to, any person who may come into contact with food by sale, processing, preparation, packaging, serving, or who comes in contact with any utensil or equipment of any kind used in said process, or who is employed in a room or rooms in which food is being processed, prepared, packaged, served, or sold.
- h) **FOOD MARKET** shall mean any food establishment, including, but not limited to, a grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any other food establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of this ordinance shall not include meat or poultry slaughterhouses.
- i) **FOOD OR BEVERAGE VENDING MACHINE** shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverage, either in bulk or in package.
- j) **FOOD-PROCESSING ESTABLISHMENT** shall mean a commercial establishment in which food is processed or otherwise prepared, packaged or manufactured for human consumption.
- k) **FOOD SERVICE ESTABLISHMENT** shall mean any food establishment, including but not limited to, a restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant, drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public, or non-profit organization or institution routinely serving food, and any other eating or drinking



establishment where food or drink is prepared, served or provided for human consumption with or without charge.

- 1) **HEALTH COMMISSIONER** shall mean the Director of Public Health of the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or her authorized representative.
- m) **IMMINENT HEALTH HAZARD** shall mean any event, circumstance or situation which in the sole discretion of the Health Commissioner, or her authorized representative, presents a serious and present health risk to a person or the public.
- n) **MACHINE LOCATION** shall include, but not limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed or operated.
- o) **MOBILE FOOD MARKET** shall mean any food establishment capable of being readily moved from location to location where food, intended for human consumption outside of the facility, is stored, sold or offered for sale in prepackaged form, fresh or frozen, at retail or wholesale prices.
- p) **MOBILE FOOD SERVICE ESTABLISHMENT** shall mean any food establishment without a fixed location capable of being readily moved intact from location to location by its motorized power unit, or as a trailer, or as a peddled or pushed carrier, or as a tote box.
- q) **Operate** and/or its derivatives shall mean the doing or performing of practical work or involving the practical application of principals or processes.
- r) **PERMIT** shall mean a certificate and/or a permit number of a size and style previously approved by the Health Commissioner.
- s) **PERMITTEE** shall include the person who is the owner of or responsible for the operation of a food establishment which shall include his/her/its authorized representative and who shall be responsible for the acceptance of all notices at the address listed on the application for any permit issued hereunder.
- t) **PERSON** shall include, but not be limited to, an individual, a corporation, firm, partnership, proprietorship, association, business organization, municipality or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.
- u) **POTENTIALLY HAZARDOUS FOOD** shall mean any perishable food that consist in whole or in part of milk or milk products, eggs, meat, poultry, fish, shell fish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a PH level of four and six-tenths (4.6) or below or a water activity (Aw) value of eighty-five hundredths (0.85) or less under standard conditions or food products in hermetically sealed containers processed to prevent spoilage.
- v) **SAFE TEMPERATURES** as applied to potentially hazardous food shall mean food temperatures at 45 degrees F or below, and 140 degrees F or above, and frozen foods at



0 degrees F or below, provided, however, a tolerance of 5 degrees shall be permitted on frozen foods only.

- w) **TEMPORARY FOOD MARKET** shall mean any food establishment in an enclosure, stall or other facility, whether fixed or mobile, operating at a fixed location on a seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits, vegetables, honey or cider intended for human consumption off the premises are offered for sale at retail or wholesale.
- x) **TEMPORARY FOOD SERVICE ESTABLISHMENT** shall mean any food establishment operating at one site or location for a period of time not in excess of fourteen (14) consecutive calendar days, in connection with a fair, carnival, circus, public exhibition, or any other gathering, whether or not the facility is fixed or movable.
- y) **UTENSIL** shall mean all containers or any equipment of any kind or nature, including, but not necessarily limited to any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.
- z) **VENDING OPERATOR** shall include, but not necessarily be limited to any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more food or beverage vending machines.

## ARTICLE II. PERMITS

### Sec. 13.2. Permit Requirements.

It shall be unlawful for any person to sell any food or to operate a food establishment or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Commissioner, or is otherwise exempted from the provisions of this ordinance.

### Sec. 13.3 Posting.

All permits shall be posted in a conspicuous place in each food establishment. With respect to mobile food service establishment, or mobile food market, the name, address and telephone number of the permittee, shall be conspicuously displayed on each vehicle not less than two (2) inches in height.

### Sec. 13.4. Separate Permits.

A separate permit shall be required for each food establishment and/or vending operator regardless of whether or not they are contained in the same building, where the person owning and/or operating same are not identical. For each kitchen within a food establishment, a separate license shall be obtained and a separate license fee shall be paid.

### Sec. 13.5. Application/Food Establishment.

The application for a food establishment permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number



of the permittee, the name under which said permittee intends to operate, the address of the establishment and the number of food handlers employed therein, which shall include the permittee's manager, or other supervisory personnel. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection of the food establishment.

**Sec. 13.6. Application/Vending Machine.**

The application for a vending operator permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate and the number of vending machines intended to be operated. In addition, said application shall specify the location of any commissary or commissaries, the number and type of food or beverage vending machines, the locations maintained by the permittee where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food or beverages to be dispensed through vending machines. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection.

**Sec. 13.7. Issue.**

A permit shall be issued subsequent to application and inspection upon a determination by the Health Commissioner that the permittee has complied with all the applicable provisions of this Ordinance, tendered the appropriate permit fee hereinafter specified and obtained the necessary sign off sheets from the appropriate fire and building departments.

**Sec. 13.8. Term.**

a. The permit for a food service establishment, mobile food service establishment, food market, mobile food market, vending operator, commissary or food processing establishment shall be for a term of one year beginning upon the date of issue.

1. Said permit shall be renewed annually on or before the 15th day of the anniversary month.

b. The permit for a temporary food service establishment shall be for a term not to exceed fourteen (14) consecutive calendar days.

c. The permit for a temporary food market shall be for a term not to exceed six consecutive calendar months on a seasonal basis.

**Sec. 13.9. Permit not Transferable.**

No permit issued to any permittee under this Ordinance shall be transferable.

a. A new permittee taking over a continuously operating food establishment shall be entitled to a nonrenewable probationary permit.

b. This probationary permit will be issued at the time the new permittee makes application for an annual food



establishment permit and pays all application and permit fees.

- c. The probationary permit will be valid for a period of thirty days, which commences on the date of application, and shall not be subject to any extensions.
- d. The new permittee must obtain its annual permit within the thirty day probationary period or its permit will be revoked until the permittee complies with all annual permit requirements.
- e. The annual permit issued within the thirty day probationary period shall have as its anniversary date, the original date of application for the probationary permit.

**ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION  
OF FOOD ESTABLISHMENTS AND VENDING  
MACHINES.**

**Sec. 13.10. Construction, Renovation and Alteration of Food  
Establishments and Vending Machines.**

All construction, renovation and alteration of food establishments and vending machines shall be as follows:

- a) all food establishments which are hereinafter constructed or renovated shall conform in their construction to the applicable requirements of Chapter 6 of this Ordinance.
- b) no such construction, renovation or alteration shall begin without the construction, renovation or alteration plans being first submitted to and approved by the Health Commissioner. Failure to obtain the Health Commissioner's approval, shall be the basis for the issuance of an immediate stop work order by the Health Commissioner.
- c) all equipment installed in a food establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing or serving of food or drink, shall be of a type conforming with the minimum standards of the National Sanitation Foundation (NSF) or (ETL), or better.
- d) the Health Commissioner may condemn equipment that fails to meet NSF or ETL standards.
- e) all food establishments must fully comply at all times with all local and state building and fire codes. Compliance with the building and fire codes is a pre-condition to the issuance, reinstatement or renewal of any permit. Failure of any permittee to fully comply with said building and fire codes shall be the basis for the suspension, immediate closure and/or revocation of any permit issued hereunder.
- f) all food establishments involved with the on-sight preparation of food shall be required to install and maintain a food preparation sink which is separate and independent of the other sinks required under 410 IAC 7-15.1 and 7-16.1, as amended.



ARTICLE IV. APPLICATION AND/OR PERMIT FEES.

Sec. 13.11. Fees.

Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, a fee or fees, which shall be deposited into the City-County Health Fund for each such operation in accordance with the classification as established in the following schedule of fees.

Sec. 13.12. Application Fees.

a) Each new food establishment shall be required to pay a fee for the review of plans, specifications and the initial inspection of the food establishment. This fee is in addition to the permit fee. The application fee shall be based upon the square footage of the building floor area or, in those instances where the food establishment takes up only a portion of the total floor area, the actual square footage of floor area involved with the operation of the food establishment, as follows:

1. Under 3,000 square feet	\$ 75.00
2. 3,001 to 30,000 square feet	150.00
3. 30,001 to 40,000 square feet	225.00
4. 40,001 to 60,000 square feet	300.00
5. 60,001 square feet and over	375.00

b) Each new permittee of a food establishment which is in existence and has been operating on a continual basis up to the time that the new permittee takes over the ownership or possession of said food establishment shall be required to pay a fee of \$50.00 for the initial inspection of the food establishment. This fee is in addition to the permit fees as set out herein.

Sec. 13.13. Permit Fees for Food Service Establishment, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment.

Permit Fees for Food Service Establishments, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment are as follows:

1. 1 through 5 employees	\$ 110.00
2. 6 through 9 employees	150.00
3. 10 through 40 employees	175.00
4. 41 employees and over	200.00
5. Temporary food service establishments as follows:	
a. 1 to 2 days	15.00
b. 3 to 4 days	30.00
c. 5 to 6 days	45.00
d. 7 to 9 days	60.00
e. 10 to 11 days	75.00
f. 12 to 14 days	90.00
6. Temporary food market	25.00



which comply with the terms and provisions of I.C. 16-1-20-26, unless they waive said exemption and/or operate more than thirty days in a calendar year and provide food service to persons other than members, guests or students on a regular basis.

1. Applicants for this exemption shall provide the Health Commission with a copy of its 501(c)(3) status.

c. Establishments which sell or offer for sale freshly popped popcorn, coffee or prepackaged confections such as candy, chewing gum, nuts, potato chips, pretzels, popcorn, soft drinks, ice, or prepackaged non-readily perishable food or food products in hermetically sealed containers processed to prevent spoilage shall be exempt from the provisions of Chapters 3 and 4 regarding the necessity for obtaining a permit and/or the payment of any permit fee.

d. Vending machines which dispense only prepackaged, pre-bottled, non-readily perishable food and beverages shall be exempt from the provisions of this Ordinance.

#### ARTICLE V. MINIMUM SANITARY REQUIREMENTS

**Sec. 13.20. Minimum sanitary requirements for food establishments, vending operators, food and beverage vending machines and bed and breakfast inns.**

a. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as provided in its Regulations 410 IAC 7-15.1 and 7-16.1, as amended.

b. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall be required to tap into a publicly supplied water system when said system is located within 300 feet of the boundary lines of the real estate upon which said food establishment is located, when said system is adequate to handle an additional tap-in, and when the permittee has direct access to said system or can obtain access to said system by means of easements or other necessary grants of authority. In the case where the permittee does not have direct access to said system, the permittee shall be required to make a diligent and reasonable effort to obtain the necessary easements and/or other grants of authority to obtain access to the system.

**Sec. 13.21. The minimum sanitary requirements for temporary food markets are as follows.**

a. Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.

b. All equipment and utensils used in storing and displaying fresh fruits and vegetables shall be sanitized.

c. Only fresh fruits, honey, cider and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.

d. All fresh fruits, honey, cider and vegetables shall be stored or displayed at least thirty (30) inches above

the floor level and in such manner as to protect the food from contamination by splash, foot traffic, dust, animals and other means.

- e. Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.
- f. All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.
- g. The Health Commissioner may augment such requirements when she may deem it necessary to prevent a condition which may constitute a public health hazard.

**Sec. 13.22. Designation of a "No Smoking" Area.**

The permittee of any food establishment where food is sold for consumption on the premises shall designate a portion of the area where food is consumed as a "no smoking" area. Smoke or smoking means that carrying or holding of a lighted pipe, cigar, cigarette of any kind or any other lighted smoking equipment or the lighting or emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind. The prohibitions, requirements or duties of this section shall not apply to banquet rooms in use for private functions, cocktail lounges or bars, including cocktail lounges and bars within any food establishment.

**ARTICLE VI. HEALTH AND DISEASE CONTROL**

**Sec. 13.23. Infected Persons Prohibited:**

- a. No person, who has a communicable or infectious disease such as an open wound, an acute respiratory infection, vomiting or diarrhea caused by an infection shall work in a food service establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.
- b. No person known or believed to be affected with any such disease or condition shall be employed in such an area or capacity.
- c. If the manager or person in charge of the food establishment has reason to believe that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the Health Commissioner immediately.

**Sec. 13.24. Procedure When Disease Suspected:**

The Health Commissioner may require any or all of the following measures when she has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food establishment:

- a. The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food establishments.
- b. The immediate closure of the affected food establishment until the Health Commissioner determines that no further danger of the disease exists.



c. The medical examination of any person determined to be a possible carrier or transmitter of the disease, and said persons' associates, to such extent as may be deemed necessary to satisfy the Health Commissioner that the termination or absence of the disease can be made to a reasonable medical certainty.

**Sec. 13.25. Hand Washing.**

Before starting to work, each food handler shall thoroughly wash his/her hands, arms and fingernails with soap and warm water and use such other facilities as to assure good personal hygiene of the hands, arms and fingernails. Such hand washing must be repeated during working hours after smoking, after using the restrooms, after coughing into hands or as often as may be necessary to remove soil and contamination. The hands and fingernails of all food handlers are to be kept out of their hair, nose and mouth and are to be kept clean while engaged in handling food and food contact services. Except for essential taste testing in an approved manner, food handlers are not to consume food or beverages during the preparation or serving of any food.

**ARTICLE VII. SALE, EXAMINATION, CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD OR BEVERAGE.**

**Sec. 13.26. The Sale of Food or Beverage Which is Unwholesome, Adulterated or Misbranded.**

It shall be a violation of this Ordinance for any person to sell through a food establishment, any food or beverage or substances which is unwholesome, adulterated or misbranded. Provided, however, that the term "misbranded" as used in this Ordinance does not mean a meal item, prepared to an individual recipe, that is denominated by commonly-accepted menu terminology.

**Sec. 13.27. Health Commissioner Examination of Food or Beverage.**

Samples of food, or beverage and other substances may be taken and examined by the Health Commissioner as often as he may deem necessary to determine freedom from unwholesomeness, adulteration or misbranding.

**Sec. 13.28. Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.**

The Health Commissioner may condemn, forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded.

**Sec. 13.29. Public Embargo.**

Whenever the Health Commissioner has probable cause to believe that any food or beverage is adulterated and/or misbranded, she shall use the public embargo as outlined in the Indiana Food, Drug and Cosmetic Act, I.C. 16-1-28-22 or 23.

**ARTICLE VIII. EDUCATION**

**Sec. 13.30. Food Handler Education.**

Every person who is employed, or is about to be employed as a food handler, shall be familiar with the

requirements of 410 I.A.C. Should a food establishment receive a score on a single inspection below 60, receive a score on two consecutive inspections between 60 and 70, be subjected to an immediate closure by the Health Commissioner or be closed for any other reason by the Health Commissioner, then each food handler employed by said food establishment shall be required to attend a food service educational program given, from time to time, by the Department. The Department shall charge a flat fee of \$100.00 to each food establishment for conducting the food service educational program regardless of whether or not attendance is voluntary or involuntary in nature. A copy of 410 I.A.C. shall be kept on the premises at all times.

#### ARTICLE IX. INSPECTIONS

##### Sec. 13.31. Frequency of Inspection.

Each food establishment for which a permit is required under the provisions of this Ordinance shall be inspected at least once each six months, or more frequently if determined necessary by the Health Commissioner.

##### Sec. 13.32. Inspection of Temporary Food Service Establishment.

Each temporary food service establishment for which a permit is required under the provisions of this Ordinance shall be inspected at least once in each forty-eight hour period.

##### Sec. 13.33. Authority to Inspect and to Copy Records.

The permittee, shall, upon the request of the Health Commissioner, permit access to all areas of every such food establishment and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment.

##### Sec. 13.34. Procedure When Violations Noted:

- a. If during the inspection of any food establishment the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, she shall issue a written order listing such violations, shall deliver said list to the permittee and shall fix a time within which the permittee shall abate or remedy such violations.
- b. If during the inspection of any temporary food service establishment or temporary food market the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, she may order the immediate correction of the violation or order any other action as set forth in this Chapter.
- c. A copy of the written order shall be filed in the records of the Department after appropriate review by supervisory personnel.



ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE,  
REVOCATION HEARING AND  
REINSTATEMENT OF PERMIT

Sec. 13.35. Suspension of Permit.

The Health Commissioner may order the revocation or suspension of any permit issued for a temporary food service establishment or temporary food market which order shall include the prohibition of any further sale or serving of food or beverage. Upon the issuance of the order, the permit shall automatically be considered revoked, null and void. The Health Commissioner may order the revocation or suspension of the permit for any of the following reasons:

- a. Failure to meet any of the standards or violations of any of the provisions established by this Ordinance.
- b. Interference with the Health Commissioner, or her authorized representative, in the performance of her duties. Interference shall be defined as the process of obstructing, hampering or blocking the Health Commissioner in the performance of her duties.
- c. At the request of the permittee, a hearing shall be afforded within twenty-four (24) hours of the issuance of the written suspension order. Said hearing shall be conducted as set forth in 10-2-11-4.

Sec. 13.36. Immediate Closure.

- a. Notwithstanding any other provisions of this Chapter, whenever the Health Commissioner or her authorized representative finds insanitary or other conditions, involving the operation of any food establishment or food or beverage machine operation which, in her opinion, constitutes an imminent health hazard, she shall, without notice or hearing, issue and serve a written order to the permittee requiring the immediate closure of its operations, shall cite the existence of insanitary condition and shall specify the corrective action to be taken.
- b. Such order shall be effective immediately.
- c. Upon petition to the Health Commissioner, the permittee shall be afforded a hearing as soon as possible.
- d. The Health Commissioner may make a reinspection upon the request of the permittee. When the Health Commissioner determines that the necessary corrective action has been taken, the operation may be resumed.

Sec. 13.37. Revocation of Permit.

- a. Any permit issued hereunder may be revoked by the Health Commissioner as a result of the willful or continuous violation of any provision of this Ordinance.
- b. No such revocation shall be ordered by the Health Commissioner except after a hearing held upon at least 10 days written notice to the permittee of the time, place and nature thereof.
- c. Such notice shall be served upon the permittee by leaving, or mailing by Certified Mail, the notice to the address listed by the permittee as his/her/its address on the permit application.

Sec. 13.38. Hearing.

- a. At any hearing required under this Chapter, every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by counsel. All such hearings shall be conducted in a informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- b. Upon the conclusion of such hearing, the Health Officer shall enter a final order determining the issue(s), which shall be conclusive upon all parties, subject to the right to appeal.

Sec. 13.39. Appeal.

- a. Any permittee aggrieved by any final order of the Health Commissioner shall be entitled to a review of the final order before the Board by filing a written request therefore with the Secretary of the Board within 15 days after such final order is issued.
- b. Upon the Health Commissioner's receipt of such request, the Board shall hear the matter denovo in open hearing upon at least 10 days written notice of the time, place and nature thereof. The notice shall be issued by the Secretary of the Board to the Health Commissioner and the permittee filing the request.
- c. The notice shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the address listed on the permit application as permittee's address or such other address as permittee shall designate in writing on the request.
- d. At such hearing, the same rules of procedure shall apply as in the case of the hearing before the Health Commissioner; provided, that upon written demand by the permittee, the Board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party.
- e. The expense of such proceedings shall be charged to the permittee who applied for the review, except that copies of transcripts shall be at the expense of the party obtaining the same. The Board may require the permittee to deposit with such application an amount determined by the Board to be necessary to secure such expense.
- f. The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing in the permanent records of the Board.

ARTICLE XI. ENFORCEMENT

Sec. 13.40. Enforcement.

It shall be the duty of the Health Commissioner to enforce the provisions of this Chapter. Any permit issued in conflict with the provisions of this Chapter shall be null and void. A violation of an order issued by the Health Commissioner or Board shall be considered to be a violation of this Chapter.



Sec. 13.41. Violations.

Whenever the Health Commissioner determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person, is in willful violation of any of the provisions of this Chapter, the Health Commissioner shall furnish evidence of said willful violation to the Prosecuting Attorney of Allen County, Indiana or the attorney for the Board who shall seek all appropriate legal remedies against the persons violating said provisions of this Chapter.

Sec. 13.42. Penalty.

Any person who willfully violates any of the provisions of this Chapter shall be subject to a fine of not more than \$500.00 for each violation. Each day of the existence of any violation of this Chapter shall be considered to be a separate offense.

Sec. 13.43. Injunction.

The Health Commissioner may bring an action for an injunction in the Circuit or Superior Court of Allen County, Indiana, to restrain any person from violating the provisions of this Chapter, to cause such violation to be prevented, abated or removed.

Sec. 13.44. Expense.

Any person violating any of the provisions of this Chapter shall be liable to the Fort Wayne-Allen County Board of Public Health for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and cost.

Sec. 13.45. Cumulative.

The remedies provided in this Chapter shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor and all necessary publication.

  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay, City Attorney

## Chapter 13

### FOOD AND FOOD ESTABLISHMENTS\*

#### Article I. In General

- § 13-1. Definitions.
- § 13-2. Promulgation of rules and regulations by health officer.
- § 13-3. Minimum sanitary requirements.
- § 13-4. Sale, examination and condemnation of unwholesome, adulterated or misbranded products.
- § 13-5. Employment of carriers of communicable diseases.
- § 13-6. Procedure when transmission of communicable disease suspected.
- § 13-7. Food handler education program.
- § 13-8. Inspections — Frequency.
- § 13-9. Same — Failure to comply with sanitary requirements.
- § 13-10. Same — Right of entry and access to records.
- § 13-10.1. Smoking prohibitions in portions of indoor eating establishments.
- § 13-11. Construction of establishments and vending machines; installation of equipment; directives by health officer.
- § 13-12. Prosecution of violators.
- § 13-13. Penalties.

#### Article II. Permits

- § 13-14. Required; posting; term; contents.
- § 13-15. Separate permit for each establishment.
- § 13-16. Prerequisites to issuance.
- § 13-17. Application; issuance.
- § 13-18. Transfer.
- § 13-19. Fees — Schedule.
- § 13-20. Same — Exemptions.
- § 13-21. Suspension, revocation generally and reinstatement.
- § 13-22. Revocation of permit for temporary establishments.

### ARTICLE I. IN GENERAL

#### Sec. 13-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

\*Cross references—Advertising generally, Ch. 3; business regulations generally, Ch. 7; health and sanitation, Ch. 14; milk and milk products, Ch. 16; vendors selling food or refreshments in park, § 19-9.

State law references—Authority of city to regulate, inspect and license food businesses, IC 1971, § 18-1-1.5-7; adulterated food, IC 1971, § 16-1-29-2 et seq.; food establishments generally, IC 1971, §§ 16-1-20-1—16-1-20-25, 16-6-1-1—16-6-1-15.

Supp. No. 27, 5-88



*Board of public health:* The board membership of the Fort Wayne-Allen County department of public health of the city.

*Commissary:* Such term shall include, but not be limited to, any place in which food, beverages, food or beverage ingredients, containers or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.

*Department of public health:* The Fort Wayne-Allen County Department of Public Health of the city.

*Food:* Such term shall include, but not be limited to, all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery or condiment, whether simple, mixed or compound, and all substances and ingredients used in the preparation thereof or which become components thereof.

*Food handler.* Such term shall include, but not be limited to, any person who may come into contact with food during exposure by sale, processing, preparation, packaging or serving, or who comes in contact with any utensil or equipment of any kind, during any such exposure, or who is employed in a room in which food is being processed, prepared, packaged, served or sold.

*Food market.* Such term shall include, but not necessarily be limited to, grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store or any other establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, or sold or offered for sale at retail or wholesale; provided, that the provisions of this chapter shall not include meat or poultry slaughterhouses.

*Food or beverage vending machine.* Any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverages, either in bulk or in package.

*Food service establishment.* Such term shall include, but not be limited to, a restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant or drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment, whether fixed or movable, where food or drink is prepared, served or provided for human consumption with or without charge.

*Health officer.* The director of public health of the Fort Wayne-Allen County department of public health, or his authorized representative.

*Machine location.* Such term shall include, but not be limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed and operated.

*Mobile food service establishment.* Any food serving facility capable of being readily moved from location to location; one without a fixed location.



*Person.* Such term shall include, but not be limited to, a corporation, firm, partnership, proprietorship, association, business organization or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

*Readily perishable food.* Any food, as defined in this section, which consists in whole or in part of milk, milk products, eggs, meat, fish, poultry or other food capable of supporting rapid and progressive growth of microorganisms which can cause infection or intoxication; provided, that products in hermetically sealed containers processed by heat or other methods approved by the health officer to prevent spoilage, and dehydrated, dry or powdered products so low in moisture content as to preclude development of microorganisms are excluded from the terms of this definition.

*Temporary food market.* Any enclosure, stall or other facility, whether fixed or mobile, operating on a seasonal basis for one or more days and not to exceed six consecutive calendar months, where only fresh fruits and vegetables intended for human consumption off the premises are offered for sale at retail or wholesale.

*Temporary food service establishment.* Any food service facility operating for a period of time not in excess of two consecutive calendar weeks, in connection with a fair, carnival, circus, public exhibition or any other gathering at any impermanent location, whether or not the facility is fixed or movable.

*Utensil.* All containers or any equipment of any kind or nature, including, but not necessarily limited to, any kitchenware, tableware, glassware or cutlery with which food may come into contact during storage, preparation, serving or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of such containers or equipment.

*Vending operator.* Such term shall include, but not be limited to, any person who by contract, agreement or ownership takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines.

(Ord. G-41, § 1; Ord. G-23-75, § 1.)

**Sec. 13-2. Promulgation of rules and regulations by health officer.**

The health officer, individually, and not through an authorized representative, is hereby empowered to make rules and regulations to carry out, interpret and make effective the provisions of this chapter; provided, that all such rules and regulations shall be recorded in a permanently bound book kept for such purpose and open to general public inspection; and provided further, that no such regulation or rule shall be effective for a period longer than sixty days unless formally ratified by the board of health. (Ord. G-41, § 1; Ord. G-23-75, § 12.)

**Sec. 13-3. Minimum sanitary requirements.**

(a) *Generally.* All food service establishments, temporary food service establishments, food markets, vending operators and food and beverage vending machines shall comply with the minimum sanitary requirements specified by the state board of health as now provided in its regulations H.F.D. 17, H.F.D. 19 and H.F.D. 21 or as such regulations may be hereafter changed or amended by addition, revision or substitution. Such regulations, and any changes and amendments hereto which may be hereafter adopted or promulgated, are by reference incorporated herein and made part hereof, two copies of each of which are on file in the office of the department of public health for public inspection.

(b) *Temporary food markets.*

(1) All temporary food markets shall comply with the applicable provisions of this chapter.

(2) Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.

(3) All equipment and utensils used in the storing and display of fresh fruits and vegetables shall be kept clean.

(4) Only fresh fruits and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.

(5) All fruits and vegetables shall be stored or displayed at least thirty inches above the floor level and in such manner as to protect food from contamination by splash, foot traffic, dust, animals or other means.



(6) The floor area of all temporary fresh fruit and vegetable markets where foods are displayed or stored shall have smooth floors of impervious construction as to be easily cleaned and maintained in a sanitary condition; provided, that wood floors or other impervious construction that is smooth and easily cleanable shall be acceptable for mobile fresh fruit and vegetable vending vehicles.

(7) Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.

(8) Toilet and handwashing facilities shall be provided for the use of employees within a reasonable distance of the employees work area; provided, that mobile fresh fruit and vegetable vehicles shall not be required to have toilet and handwashing facilities in the vehicle.

(9) Liquid wastes shall be disposed of in a public sewer, or in the absence of a public sewer, by a method which complies with the standards and regulations of the state board of health and Fort Wayne-Allen County board of health.

(10) All plumbing shall comply with the rules and regulations of the state administration building council.

(11) All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.

(12) The health officer may augment such requirements when he may deem it necessary to prevent a condition which may constitute a public health hazard. (Ord. G-41, § 1; Ord. G-23-75, § 3.)

**Sec. 13-4. Sale, examination and condemnation of unwholesome, adulterated or misbranded products.**

It shall be unlawful for any person to sell through a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine within the county any food or

beverage or substance which is unwholesome, adulterated or misbranded; provided, that the term "misbranded" as used in this chapter does not mean a meal item, prepared to an individual recipe, that is denominated by commonly accepted menu terminology.

Samples of food or beverage and other substances may be taken and examined by the health officer as often as he may deem necessary to determine freedom from unwholesomeness, adulteration or misbranding. The health officer may condemn and forbid the sale of, or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded. Whenever the health officer finds or has probable cause to believe, that any food or beverage is adulterated or misbranded, he shall use the public embargo as outlined in the Indiana Food, Drugs and Cosmetic Act, article 5, Indiana Public Health Code, chapter 157, acts 1949, enacted March 8, 1949. (Ord. G-41, § 1; Ord. G-23-75, § 4.)

**Sec. 13-5. Employment of carriers of communicable diseases.**

No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, a cold, diarrhea, gastrointestinal upsets or a respiratory infection shall work in any area of a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or service or maintain food or beverage vending machines in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or believed to be affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or vending operation has reason to believe that any employee has contracted any disease in a communicable form or has become a



carrier of such disease, he shall notify the health officer immediately. (Ord. G-41, § 1; Ord. G-23-75, § 5.)

**Sec. 13-6. Procedure when transmission of communicable disease suspected.**

When the health officer has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or a food or beverage vending machine, the health officer may require any or all of the following measures:

(a) The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, food or beverage vending machine locations.

(b) The immediate closing of the affected food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or food or beverage vending machine location until no further danger of the presence of disease exists in the opinion of the health officer.

(c) Medical examinations of any person determined to be a possible carrier or transmitter of disease and such person's associates to such extent as may be deemed necessary to satisfy the health officer that a determination of the presence or absence of disease can be made to a reasonable medical certainty. (Ord. G-41, § 1; Ord. G-23-75, § 5.)

**Sec. 13-7. Food handler education program.**

Every food handler or person who is employed or about to be employed as a food handler may be required to attend a food service educational program from time to time at the city-county department of public health. (Ord. G-23-75, § 6.)

**Sec. 13-8. Inspections—Frequency.**

(a) At least once each six (6) months, or more frequently if determined necessary by the health officer, the health officer shall inspect each food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine for which a permit is required under the provisions of this chapter.

(b) At least once in each forty-eight hour period the health officer shall inspect each temporary food service establishment for which a permit is required under the provisions of this chapter. (Ord. G-41, § 1; Ord. G-23-75, § 7)

**Sec. 13-9. Same—Failure to comply with sanitary requirements.**

If during the inspection of any food service establishment, mobile food service establishment, food market or food or beverage vending machine operation the health officer discovers the violations of any of the sanitary requirements in section 13-3, he shall issue a written order listing such violations to the owner or manager or, in his absence, any other person ostensibly in charge, and fixing a time within which such operator of such food service establishment, mobile food service establishment, food market, food or vending machine shall abate and remedy such violations. A copy of the written order shall be filed in the records of the department of public health. If during the inspection of any temporary food service establishment or temporary food market the health officer discovers the violation of any of the sanitary requirements in section 13-3, he shall order the immediate correction of this violation. (Ord. G-41, § 1; Ord. G-23-75, § 7)

**Sec. 13-10. Same—Right of entry and access to records.**

The owner, manager or other person ostensibly in charge of any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, machine location, or food or beverage vending machine shall, upon the request of the health officer, permit access to all areas of every such food service establishment, temporary



food service establishment, mobile food service establishment, food market, temporary food market and machine location, as well as all parts of any food or beverage vending machine, and shall permit inspection of, access to and the copying of any and all records relating to food and beverage sanitation of any such establishment, market, machine or location. (Ord. G-41, § 1; Ord. G-23-75, § 7)

**Sec. 13-10.1. Smoking prohibitions in portions of indoor eating establishments.**

(a) The proprietor or other persons in charge of any publicly or privately owned restaurant, indoor cafe, shop, cafeteria, short order cafe, luncheonette, soda fountain, or other indoor eating establishment open to the general public where food is sold for consumption on the premises shall designate at least a portion of the area where food is consumed as a "no smoking" area designated in accordance with this section.

(b) For the purposes of this section "smoke" or "smoking" means that carrying or holding of a lighted pipe, cigar or cigarette of any kind or any other lighted smoking equipment or the lighting or emitting or exhaling of the smoke of a pipe, cigar, or cigarette of any kind.

(c) The prohibitions, requirements or duties of this section shall not apply to banquet rooms in use for private functions, cocktail lounges or bars, including cocktail lounges and bars within any indoor eating establishment where such cocktail lounges or bars are primarily engaged in the business of selling or dispensing alcoholic or other beverages, even if food or snacks are also served. When a cocktail lounge or bar is operated within a building in conjunction with another use, such as an eating establishment, only the area utilized primarily for the serving and consumption of alcoholic beverages shall constitute the cocktail lounge or bar. The dining area of an eating establishment utilized primarily for the serving and consumption of food shall not constitute a cocktail lounge or bar, even though alcoholic beverages may be served therein.

(d) At least once each six (6) months, or more frequently if determined necessary by the health officer, the health officer shall inspect each indoor eating establishment for the purposes of

monitoring compliance with the terms of this section. If during the inspection of any such indoor eating establishment, the health officer discovers a violation of the terms of this section, the health officer shall issue a written order listing such violation to the owner or manager, or in his absence, any other person ostensibly in charge, and fixing a time within which such operator of such indoor eating establishment shall abate and remedy such violation. A copy of the written order shall be filed in the records of the department of public health. If, after issuing such a written warning, and upon the expiration of the time within which operator of such indoor eating establishment fails to abate and remedy such violation, a health officer shall thereafter observe a willful violation of the provisions of this section in any indoor eating establishment, such health officer shall forward evidence of such willful violation to the city attorney, who shall prosecute all persons willfully violating this section, and shall subject those persons to the penalties provided for below.

(e) Any person that willfully violates any of the provisions of this section shall be deemed guilty of a misdemeanor. Upon conviction the violator shall be punished by a fine of not more than five hundred dollars (\$500.00). (Ord. No. G-07-88, § 2, 5-10-88)

**Editor's note**—Ordinance No. G-07-88, § 2, adopted May 10, 1988, amended the Code by adding § 13-8.1 thereto. For classification purposes, the editor has redesignated the substantive provisions of § 2 of the ordinance as § 13-10.1.

**Sec. 13-11. Construction of establishments and vending machines; installation of equipment; directives by health officer.**

All food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets and all food and beverage vending machines which are hereafter constructed or renovated shall conform in their construction to the applicable requirements of section 13-3. Properly prepared plans shall be submitted to the health officer for approval before work is begun.

All equipment installed in a food service establishment for use in the cleaning and bactericidal treatment of utensils and in the preparation, storing, handling or serving of food or drink for consumers shall be of a type conforming with the minimum standards of the National Sanitation Foundation, or better. Any direc-



tive by the health officer calling for installation or replacement of equipment, or structural change in excess of one hundred dollars (\$100.00) cost, shall be given in writing with approval certified by the Fort Wayne-Allen County health officer personally. A person who receives such a directive may, within ten days after receipt of such notice, appeal the directive to the Fort Wayne-Allen County board of public health. If the decision of the board of public health is adverse to the person he may appeal to the circuit or superior court of the county in the manner now provided by law in other civil actions. (Ord. G-41, § 1; Ord. G-23-75, § 11)

**Sec. 13-12. Prosecution of violators.**

Whenever the health officer determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person is in willful violation of any of the provisions of this chapter, the health officer shall furnish evidence of such willful violation to the city attorney, who shall prosecute all persons violating such provisions of this chapter. (Ord. G-23-75, § 10.)

**Sec. 13-13. Penalties.**

Any person who willfully violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor. Upon conviction the violator shall be punished for the first offense by a fine of not more than five hundred dollars; for the second offense by a fine of not more than one thousand dollars; and for a third and each subsequent offense by a fine of not more than one thousand dollars to which may be added imprisonment for any determinate period not exceeding ninety days. Each and every violation of the provision of this chapter and each day that the same continues shall constitute a separate offense. (Ord. G-23-75, § 14.)

**ARTICLE II. PERMITS.****Sec. 13-14. Required; posting; term; contents.**

It shall be unlawful for any person to operate a food service establishment, a temporary food service establishment, a mobile food service establishment, a food market or a temporary food market, or to act, whether actually or ostensibly, as a vending operator in the county, who does not possess a valid permit for each such operation from the health officer; provided, that the provisions of this article shall not apply to fruit and vegetable stands maintained and operated by a person who sells direct to consumers, fresh fruits or vegetables, obtained therefrom, grown and sold on land owned or controlled by him.



Such permit shall be posted in a conspicuous place in each such food service establishment, temporary food service establishment, food market or temporary food market. With respect to mobile food service establishments, a permit number of size and style approved by the health officer, but in not less than one half inch, boldfaced, capital lettered print, shall be conspicuously displayed on each vehicle. Any vending operator's permit number, of a size and style approved by the health officer, shall be conspicuously displayed on each vending machine operated, maintained or supplied by such operator.

Only persons who comply with the applicable provisions of this chapter shall be entitled to receive and retain such a permit.

The permit for a food service establishment, mobile food service establishment, food market and vending operator shall be for a term of one year beginning upon the date of issue and to be renewed annually on the anniversary date thereof. The permit for a temporary food service establishment shall be for a term not to exceed two consecutive calendar weeks. The permit for a temporary food market shall be for a term not to exceed six consecutive calendar months on a seasonal basis.

Any permit issued by the health officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same is issued, and such other pertinent data as may be required by the health officer. (Ord. G-41, § 1; Ord. G-23-75, § 2.)

**Sec. 13-15. Separate permit for each establishment.**

A separate permit shall be required for each food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market and vending operator. (Ord. G-41, § 1; Ord. G-23-75, § 2.)

**Sec. 13-16. Prerequisites to issuance.**

A permit shall be issued subsequent to application and inspection and upon determination by the health officer that the applicant food service establishment, temporary food service

establishment, mobile food service establishment, food market, temporary food market or vending operator has complied with all the applicable provisions of this chapter, and has tendered the appropriate permit fee as specified in section 13-19. (Ord. G-41, § 1; Ord. G-23-75, § 2)

#### **Sec. 13-17. Application; issuance.**

Application for a food service establishment, temporary food service establishment, mobile food service establishment, food market and temporary food market permit shall be made to the health officer on forms provided by the health officer. Such forms shall show, upon completion and among other information which may be required by the health officer, the legal name of the applicant person and address, the name under which such person intends to operate, the address of the establishment, and the number of food handlers employed therein and the report of the health officer of the initial inspection of the applicant.

Application for a vending operator permit shall be made to the health officer on forms provided by the health officer for such purpose. Such forms shall show, when completed and among other information which may be required by the health officer, the applicant person's full name, residence and post office address, and whether such applicant is an individual, firm, corporation or partnership, and in such latter instance, the names of the partners and their respective addresses shall be included. In addition, such application shall specify the location of any commissary, the number and type of each food or beverage vending machine and any and all other locations maintained by the applicant where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food to be dispensed through vending machines of the applicant. Such application shall include the signature of the applicant and the report of the health officer of the initial inspection of the premises. Upon approval by the health officer of the premises described in the application, the health officer shall issue the applicant person a permit. (Ord. G-41, § 1; Ord. G-23-75, § 2)



**Sec. 13-18. Transfer.**

No permit issued to any person under this chapter shall be transferable. (Ord. G-41, § 1; Ord. G-23-75, § 2)

**Sec. 13-19. Fees—Schedule.**

Every applicant for a permit to operate a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or as a vending operator shall tender to the treasurer of the county a fee and such fee shall be deposited into the city-county health fund for each such operation in accordance with the following schedule of fees.

Permit fees shall be paid annually, or for such lesser period, or hereafter specified in accordance with the following classifications:

(a) *Food service establishments, temporary food service establishments, temporary food markets:*

(1) 1—5 employees .....	\$ 55.00
(2) 6—9 employees .....	85.00
(3) 10 or more employees .....	130.00
(4) Temporary food service establishments, each day's operation .....	8.00
(5) Temporary food market .....	5.00
(6) All other food service establishments not otherwise provided for above or hereinafter .....	50.00

(b) *Food market:*

Square Footage of Floor Area

(1) Under 2,000 .....	\$45.00
(2) 2,000 to 7,999 .....	55.00
(3) 8,000 to 9,999 .....	85.00
(4) 10,000 feet or over .....	130.00

(c) *Mobile food service establishment:*

Gross Weight of Mobile Food Establishment

(1) Under 1,000 pounds .....	\$55.00
(2) Over 1,000 pounds .....	85.00

(d) *Vending operator:*

(1) One to not more than 10 food or beverage vending machines, per machine .....	\$7.50
(2) 11 to not more than 25 machines ...	112.50
(3) 26 to not more than 50 machines ...	150.00
(4) 51 to not more than 100 machines ...	225.00
(5) 101 to not more than 200 machines ..	300.00
(6) 201 to not more than 300 machines ..	375.00
(7) 301 or more machines .....	450.00

(Ord. G-41, § 1; Ord. G-23-75, § 2; Ord. No. G-16-79, § 1, 7-10-79)

**Sec. 13-20. Same—Exemptions.**

The permit fee provisions of this article shall not apply to food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets operated by, or vending operators which are, religious, educational, and charitable organizations operating upon their own premises, unless they provide food services to persons other than members, guests or students on a regular basis; provided, however, the permit fee provisions of this article shall apply to food service establishments, temporary food service establishments, mobile food establishments, food markets, temporary food markets, or vending operators operated by religious, education and charitable organizations providing food services off their own premises for human consumption with or without charge.

Establishments which shall sell or offer for sale only prepackaged confections such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn and soft drink beverages, or food dispensed from a coin-operated vending machine shall be exempt from the provisions of sections 13-14 to 13-19 herein regarding the necessity for obtaining a permit from the health officer, but not section 13-3. Vending machines which dispense only prepackaged, prebottled, nonreadily perishable food and beverages shall be exempt from the provisions of this chapter. (Ord. G-41, § 1; Ord. G-23-75, § 2; Ord. No. G-09-82, § 1, 5-25-82)



**Sec. 13-21. Suspension, revocation generally and reinstatement.**

(a) *Suspension.* Any permit issued under this chapter may be temporarily suspended by the health officer for any of the following reasons:

- (1) Failure to meet any of the standards required by this chapter.
- (2) Violation of any provision or provisions of this chapter.
- (3) Interference with the health officer or any of his authorized representatives in performance of their duties.

A permit issued under the provisions of this chapter may be suspended temporarily by the health officer for any of the foregoing reasons. At the request of the operator, a hearing shall be afforded him within twenty-four (24) hours of the issuance of the written suspension order and prior to the effective date and hour of such suspension order. Notwithstanding any other provisions of this chapter, whenever the health officer finds insanitary or other conditions, involving the operation of any food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage machine operation which, in his opinion, constitutes an imminent health hazard, he may, without notice, or hearing, issue a written order to the operator, citing the existence of such condition and specifying corrective action to be taken and, in the event of suspected or known imminent health hazard is found to exist, require immediate discontinuance of operation. Such order shall be effective immediately, and shall apply only to the food service establishment, mobile food service establishment, food market, temporary food market or food or beverage machine operation of the product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the health officer, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and on the request of the

operator, the health officer shall make a reinspection to determine whether operations may be resumed.

(b) *Revocation generally.* Any permit issued hereunder may be revoked by the health officer for willful or continuous violation of any provision of this chapter; provided, that no such revocation shall be ordered by the health officer, except upon hearing and at least ten (10) days' written notice to the permittee of the time, place and nature thereof. Such notice shall be served upon the permittee by leaving a copy at his usual place of business or by delivery by certified mail to such address. At such hearing, every person who is a party to such proceedings shall have the right to submit evidence and to cross-examine witnesses and to be represented by counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. Upon the conclusion of such hearing, the health officer shall make a final order determining the issue in the case, which order shall be final and conclusive upon all parties; provided, that the same may be reviewed as hereafter provided. Any person aggrieved by such an order of the health officer shall be entitled to a review of the same before the board of public health by filing a written application therefor with the secretary of the board within fifteen (15) days after such order is issued. Upon receipt of such application, such board shall hear the matter de novo in open hearing upon at least ten (10) days' notice of the time, place and purpose thereof which notice shall be issued by the secretary of the board to all persons affected. Such notice may be served upon the persons affected by leaving a copy at their usual place of business or by delivery by certified United States mail to such address. At such hearing the same rules of procedure shall apply as in the case of the hearing before the health officer; provided only, that upon written demand by the permittee affected, such board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall be reproduced by such board in the form of a transcript, a copy of which shall be available to any party.



The expense of such proceedings shall be charged to the party applying for the review; except, that copies of transcripts shall be at the expense of the party obtaining the same. Such board may require the party applying for a review to deposit with such application an amount determined by it as necessary to secure such expense. Such board shall make written findings of the facts in the case and shall enter its final order or determination of the matter in writing in the permanent records of such board.

No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds. (Ord. G-41, § 1; Ord. G-23-75, §§ 2, 8)

**Sec. 13-22. Revocation of permit for temporary establishments.**

Upon failure of any person maintaining or operating a temporary food market to comply with any order of the health officer, it shall be the duty of the health officer summarily to revoke the permit of such person and establishment and to forbid the further sale or serving of food therein. Upon the revocation of any permit by the health officer, the permit of the permittee shall automatically be considered revoked, null and void. The owner, manager or any person ostensibly in control or charge of such establishment and any other person who continues or allows to be continued the selling or serving of food in such temporary food service establishment or temporary food market, the permit of which has been revoked, shall be subject to the penalties provided by section 13-13. (Ord. G-23-75, § 9)

Read the first time in full and on motion by Henry  
seconded by Bill, and duly adopted, read the second time  
title and referred to the Committee on Regulation (and the  
City Plan Commission for recommendation) and Public Hearing to be held aft  
due legal notice, at the Council Conference Room 128, City-County Building  
Fort Wayne, Indiana, on \_\_\_\_\_, the  
of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.

DATED: 2-12-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry  
seconded by Bill, and duly adopted, placed on its  
passage. PASSED ~~1991~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BRADBURY	<u>✓</u>			
BURNS	<u>✓</u>			
EDMONDS.	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
REDD	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 2-26-91.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)  
(SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. D-07-91  
on the 26th day of February, 1991,

Sandra E. Kennedy ATTEST  
SANDRA E. KENNEDY, CITY CLERK

Samuel J. Talarico SEAL  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 27th day of February, 1991  
at the hour of 2:00 o'clock 5 M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 28th day of February  
1991, at the hour of 5:15 o'clock P M., E.S.T.

PAUL HELMKE  
PAUL HELMKE, MAYOR



Notice is hereby given that on the 26th day of  
February, 19 91, the Common Council of the City  
of Fort Wayne, Indiana, in a Regular Session did pass  
the following Bill No. G-91-02-27 (as amended) (as amended) General  
Ordinance No. G-07-91 to-wit:

BILL NO. G-91-02-27 (AS AMENDED) (AS AMENDED)

GENERAL ORDINANCE NO. G- 07-91

AN ORDINANCE amending Chapter  
13 of the City of Fort Wayne  
Code of Laws.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Chapter 13 of the City of Fort  
Wayne Code of Laws be amended as follows:

CHAPTER 13. FOOD AND BEVERAGE ESTABLISHMENTS

ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.  
Sec. 13.3. Posting.  
Sec. 13.4. Separate Permits.  
Sec. 13.5. Application/Food Establishment.  
Sec. 13.6. Application/Vending Machine.  
Sec. 13.7. Issue.  
Sec. 13.8. Term.  
Sec. 13.9. Permit not Transferable.

ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION  
OF FOOD ESTABLISHMENTS AND VENDING  
MACHINES

Sec. 13.10. Construction, Renovation and Alteration of  
Food Establishments and Vending Machines.

ARTICLE IV. APPLICATION AND/OR PERMIT FEES

Sec. 13.11. Fees.  
Sec. 13.12. Application Fees.  
Sec. 13.13. Permit Fees for Food Service Establishments,  
Temporary Food Service Establishments,  
Temporary Food Markets, and Food Processing  
Establishments.  
Sec. 13.14. Permit Fees for a Food Market.  
Sec. 13.15. Permit Fees for a Mobile Food Service  
Establishment and/or Mobile Food Market.  
Sec. 13.16. Permit Fees for a Vending Operator.  
Sec. 13.17. Permit Fees for Food Establishments Owned or  
Operated by any School Corporation.  
Sec. 13.18. Failure to Obtain or Renew Permit.  
Sec. 13.19. Exemption.

ARTICLE V. MINIMUM SANITARY REQUIREMENTS

Sec. 13.20. Minimum Sanitary Requirements for Food  
Establishments, Vending Operators, Food and  
Beverage Vending Machines and Bed and  
Breakfast Inns.

Sec. 13.21. The Minimum Sanitary Requirements for  
Temporary Food Markets.

Sec. 13.22 Adoption of Rules and Regulations Established  
by the Indiana State Board of Health for Bed

PAGE 17

provision of this Chapter shall not affect the validity of any other part of this Chapter.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor and all necessary publication.

Thomas C. Henry

Councilmember

Read the third time in full and on motion by Henry, seconded by Redd, and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine

Bradbury, Burns, Edmonds, GiaQuinta, Henry, Long, Redd, Schmidt, Talarico

NAYS: None

ABSTAINED: None

ABSENT: None

DATED: 2-26-91

Sandra E. Kennedy  
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-07-91 on the 26th day of February, 1991.

ATTEST:

(SEAL)

Sandra E. Kennedy  
City Clerk

Samuel J. Talarico  
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of February, 1991, at the hour of 2:00 o'clock P.M., E.S.T.

Sandra E. Kennedy  
City Clerk

Approved and signed by me this 28th day of February, 1991, at the hour of 5:15 o'clock P.M., E.S.T.

Paul Helmke  
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-07-91, passed by the Common Council on the 26th day of February, 19 91, and that said Ordinance was duly signed and approved by the Mayor on the 28th day of February, 19 91, and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 28th day of February, 19 91.

SEAL

*Sandra E. Kennedy*  
Sandra E. Kennedy



DIGEST SHEET

TITLE OF ORDINANCE GENERAL ORDINANCE

DEPARTMENT REQUESTING ORDINANCE HEALTH DEPARTMENT

SYNOPSIS OF ORDINANCE 1) REGULATES FOOD ESTABLISHMENTS

2) INCREASES PERMIT FEES

3) REQUIRES APPLICATION FEES.

4) REPLACES CURRENT CHAPTER 13 OF CITY CODE

5-91-02-27  
(as amended)  
(as amended)

EFFECT OF PASSAGE NEW REGULATIONS AND FEES IN EFFECT.

EFFECT OF NON-PASSAGE CURRENT CHAPTER 13 REMAINS IN EFFECT.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \_\_\_\_\_

ASSIGNED TO COMMITTEE (PRESIDENT) \_\_\_\_\_

Hold over  
2/28/91

BILL NO. G-91-02-27 (~~as amended~~) (~~as amended~~)

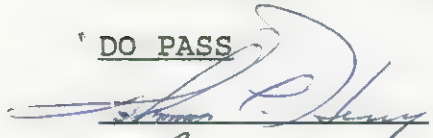

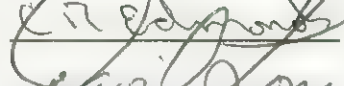
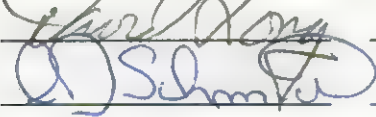
REPORT OF THE COMMITTEE ON REGULATIONS

THOMAS C. HENRY, CHAIRMAN  
DAVID C. LONG, VICE CHAIRMAN  
EDMONDS, SCHMIDT, BRADBURY

WE, YOUR COMMITTEE ON \_\_\_\_\_ REGULATIONS \_\_\_\_\_ TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending  
Chapter 13 of the City of Fort Wayne Code of Laws  
"FOOD ORDINANCE"  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~) \_\_\_\_\_

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
	_____	_____	_____
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_____	_____	_____	_____

DATED:

Sandra E. Kennedy  
City Clerk





## THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ROOM 122 • FORT WAYNE, INDIANA 46802 • 219-427-1208

SANDRA E. KENNEDY, CITY CLERK

March 5, 1991

Ms. Connie Lambert  
Fort Wayne Newspapers, Inc.  
600 West Main Street  
Fort Wayne, IN 46802

Dear Ms. Lambert:

Please give the attached full coverage on the dates of  
March 8 and March 15, 1991, in both the News Sentinel and  
Journal Gazette.

RE: Legal Notice for Common Council  
of Fort Wayne, IN

Bill No. G-91-02-27 (as amended) (as amended)  
Food Ordinance

Please send us 4 copies of the Publisher's Affidavit from  
both newspapers.

Thank you.

Sincerely yours,

*Sandra E. Kennedy*  
Sandra E. Kennedy  
City Clerk

SEK/ne  
ENCL: 1

F.W. COMMON COUNCIL  
(Governmental Unit)

To: The Journal-Gazette Dr.  
P.O. Box 100  
Fort Wayne, IN

Allen County, Indiana

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set)  
-- number of equivalent lines

Head -- number of lines

Body -- number of lines

Tail -- number of lines

Total number of lines in notice

COMPUTATION OF CHARGES

964 lines, 1 columns wide equals 964 equivalent lines  
at .495 per line

\$477.18

Additional charge for notices containing rule or tabular work  
(50 percent of above amount)

2.00

Charge for extra proofs of publication (\$1.00 for each proof in excess of two)

\$479.18

TOTAL AMOUNT OF CLAIM

DATA FOR COMPUTING COST

Width of single column 12.5 ems

Number of insertions 2

Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Clerk

Date: MARCH 15, 19 91

Title:

PUBLISHER'S AFFIDAVIT

State of Indiana )  
) ss:  
Allen County )

Personally appeared before me, a notary public in and for said county and state, the undersigned PATTY JAMES who, being duly sworn, says that he/she is Clerk of the The Journal-Gazette newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for TWO time(s), the dates of publication being as follows:  
3-8, 15/91

Subscribed and sworn to before me this 15th day of MARCH, 19 91

Notary Public Whitley County, IN  
SHELLEY R. LARUE

My commission expires: March 3, 1994

TWO BIG WINNERS!

Thanks to all w  
making our co  
"rebounding" S

The Journal-G



Sec. 13.45. Expense.  
Sec. 13.46. Cumulative.

#### ARTICLE I. IN GENERAL

##### Sec. 13.1. Definitions.

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation and enforcement of this Chapter.

a) **BOARD** shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.

b) **COMMISSARY** shall mean any food establishment, including, but not limited to, any place in which food, beverages, food or beverage ingredients, containers, or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.

c) **DANGEROUS COMMUNICABLE DISEASE** shall include those diseases which epidemiological evidence indicates can be transmitted through food preparation.

d) **DEPARTMENT** shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or its employees.

e) **FOOD** shall include, but not necessarily be limited to, all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery, or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof or which become components thereof.

f) **FOOD ESTABLISHMENT** shall mean any "food service establishment", "temporary food service establishment", "mobile food service establishment", "food market", "temporary food market", "mobile food market", "food or beverage vending machine", "food processing establishment", "commissary", or any other establishment where food intended for human consumption is manufactured, produced, stored, warehoused, prepared, handled, transported, sold, served or provided with or without charge; provided, however, that when the entire operation of a food establishment is receiving continuous inspection by an appropriate state or federal government agency, including the United States Department of Agriculture Consumer and Marketing Service or the Indiana State Board of Health, it shall not be included in the above definition, except that the Department shall be permitted to enter such food establishment to take spoiled or defective products that are suspected to be spoiled or defective when the same are discovered in any food establishment.

g) **FOOD HANDLER** shall include, but not necessarily be limited to, any person who may come into contact with food by sale, processing, preparation, packaging, serving, or who comes in contact with any utensil or equipment of any kind used in said process, or who is employed in a room or rooms in which food is being processed, prepared, packaged, served, or sold.

h) **FOOD MARKET** shall mean any food establishment, including, but not limited to, a grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any other food establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of this ordinance shall not include meat or poultry slaughterhouses.

i) **FOOD OR BEVERAGE VENDING MACHINE** shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverage, either in bulk or in package.

j) **FOOD-PROCESSING ESTABLISHMENTS** shall mean a commercial establishment in which food is processed or otherwise prepared, packaged or manufactured for human consumption.

k) **FOOD SERVICE ESTABLISHMENT** shall mean any food establishment, including but not limited to, a restaurant, coffee shop, cafeteria, short-order cafe,

term not to exceed six consecutive calendar months on a seasonal basis.

##### Sec. 13.9. Permit not Transferable.

No permit issued to a permittee under this Chapter shall be transferable.

a. A new permittee taking over a continuously operating food establishment shall be entitled to a nonrenewable probationary permit.

b. This probationary permit will be issued at the time the new permittee makes application for an annual food establishment permit and pays all application and permit fees.

c. The probationary permit will be valid for a period of thirty days, which commences on the date of application, and shall not be subject to any extensions.

d. The new permittee must obtain its annual permit within the thirty day probationary period or its permit will be revoked until the permittee complies with all annual permit requirements.

e. The annual permit issued within the thirty day probationary period shall have its anniversary date, the original date of application for the probationary permit.

#### ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION OF FOOD ESTABLISHMENTS AND VENDING MACHINES.

Sec. 13.10. Construction, Renovation and Alteration of Food Establishments and Vending Machines.  
All construction, renovation and alteration of food establishments and vending machines shall be as follows:

a) all food establishments which are hereinafter constructed or renovated shall conform in their construction to the applicable requirements or Article V. of this Ordinance.

b) no such construction, renovation or alteration shall begin without the construction, renovation or alteration plans being first submitted to and approved by the Health Commissioner. Failure to obtain the Health Commissioner's approval, shall be the basis for the issuance of an immediate stop work order by the Health Commissioner.

c) all equipment installed in a food establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing or serving of food or drink, shall be of a type conforming with the minimum standards of the National Sanitation Foundation (NSF) or (ETL), or better.

d) the Health Commissioner may condemn equipment that fails to meet NSF or ETL standards.

e) all food establishments must fully comply at all times with all local and state building and fire codes. Compliance with the building and fire codes is a precondition to the issuance, reinstatement or renewal of any permit. Failure of any permittee to fully comply with said building and fire codes shall be the basis for the suspension, immediate closure and/or revocation of any permit issued hereunder.

f) all food establishments involved with the on-site preparation of food shall be required to install and maintain a food preparation sink which is separate and independent of the other sinks required under 410 IAC 7-15.1 and 7-16.1, as amended.

#### ARTICLE IV. APPLICATION AND/OR PERMIT FEES.

##### Sec. 13.11. Fees.

Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, a fee or fees, which shall be deposited into the City-County Health Fund for each such operation in accordance with the classification as established in the following schedule of fees.

##### Sec. 13.12. Application Fees.

a) Each new food establishment shall be required to pay a fee for the review of plans, specifications and the initial inspection of the food establishment. This fee is in addition to the permit fee. The application fee shall be based upon the square footage of the building floor area or, in those instances where the food establishment takes up only a portion of the total floor area, the actual square footage of floor area involved with the operation of the food establishment, as

lighting or emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind. The prohibitions, requirements or duties of this section shall not apply to banquet rooms in use for private functions, cocktail lounges or bars, including cocktail lounges and bars within a food establishment.

#### ARTICLE VI. HEALTH AND DISEASE CONTROL

##### Sec. 13.24. Infected Persons Prohibited:

a. No person, who has a communicable disease such as an open wound, an acute respiratory infection, vomiting or diarrhea caused by an infection shall work in a food service establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.

b. No person known or believed to be affected with any such disease or condition shall be employed in such an area or capacity.

c. If the manager or person in charge of the food establishment has reason to believe that any employee has contracted and disease in a communicable form or has become a carrier of such disease, he shall notify the Health Commissioner immediately.

Sec. 13.25. Procedure When Disease Suspected:  
The Health Commissioner may require any or all of the following measures when he/she has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food establishment:

a. The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food establishments.

b. The immediate closure of the affected food establishment until the Health Commissioner determines that no further danger of the disease exists.

c. The medical examination of any person determined to be a possible carrier or transmitter of the disease, and said persons' associates, to such extent as may be deemed necessary to satisfy the Health Commissioner that the termination or absence of the disease can be made to a reasonable medical certainty.

##### Sec. 13.26. Hand Washing.

Before starting to work, each food handler shall thoroughly wash his/her hands, arms and fingernails with soap and warm water and use such other facilities as to assure good personal hygiene of the hands, arms and fingernails. Such hand washing must be repeated during working hours after smoking, after using the restrooms, after coughing into hands or as often as may be necessary to remove soil and contamination. The hands and fingernails of all food handlers are to be kept out of their hair, nose and mouth and are to be kept clean while engaged in handling food and food contact services. Except for essential taste testing in an approved manner, food handlers are not to consume food or beverages during the preparation or serving of any food.

#### ARTICLE VII. SALE EXAMINATION, CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD OR BEVERAGE

##### Sec. 13.27. The Sale of Food or Beverage Which is Unwholesome, Adulterated or Misbranded.

It shall be a violation of this Chapter for any person to sell through a food establishment, any food or beverage or substance which is unwholesome, adulterated or misbranded. Provided, however, that the term "Misbranded" as used in this Chapter does not mean a meal item, prepared to an individual recipe, that is denominated by commonly accepted menu terminology.

##### Sec. 13.28. Health Commissioner Examination of Food or Beverage.

Samples of food, or beverage and other substances may be taken and examined by the Health Commissioner as often as he may deem necessary to determine freedom from unwholesome, adulterated or misbranded.

##### Sec. 13.29 Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.

The Health Commissioner may condemn, forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or

##### Sec. 13.33. Inspection of Temporary Food Service Establishment.

Each temporary food service establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once each forty-eight hour period.

##### Sec. 13.34 Authority to Inspect and to Copy Records.

The permittee, shall, upon the request of the Health Commissioner, permit access to all areas of every such food establishment and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment.

##### Sec. 13.35. Procedure When Violations Noted:

a. If during the inspection of any food establishment the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, he/she shall issue a written order listing such violations, shall deliver said list to the permittee and shall fix a time within which the permittee shall abate or remedy such violations.

b. If during the inspection of any temporary food service establishment or temporary food market the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, he/she may order the immediate correction of the violation or order any other action as set forth in this Chapter.

c. A copy of the written order shall be filled in the records of the Department after appropriate review by supervisory personnel.

#### ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE, REVOCATION HEARING AND REINSTATEMENT OF PERMIT

##### Sec. 13.36. Suspension of Permit.

The Health Commissioner may order the revocation or suspension of any permit issued for a temporary food service establishment or temporary food market which order shall include the prohibition of any further sale or serving of food or beverage. Upon the issuance of the order, the permit shall automatically be considered revoked, null and void. The Health Commissioner may order the revocation or suspension of the permit for any of the following reasons:

a. Failure to meet any of the standards or violations of any of the provisions established by this Chapter.

b. Interference with the Health Commissioner, or his/her authorized representative, in the performance of his/her duties. Interference shall be defined as the process of obstructing, hampering or blocking the Health Commissioner in the performance of his/her duties.

c. At the request of the permittee, a hearing shall be afforded within twenty-four (24) hours of the issuance of the written suspension order. Said hearing shall be conducted as set forth in Sec. 13.38 of this Chapter.

##### Sec. 13.37. Immediate Closure.

a. Notwithstanding any other provisions of this Chapter, whenever the Health Commissioner or his/her authorized representative finds insanitary or other conditions, involving the operation of any food establishment or food or beverage machine operation which, in his/her opinion, constitutes an imminent health hazard, he/she shall, without notice or hearing, issue and serve a written order to the permittee requiring the immediate closure of its operations, shall cite the existence of insanitary condition and shall specify the corrective action to be taken.

b. Such order shall be effective immediately.

c. Upon petition to the Health Commissioner, the permittee shall be afforded a hearing as soon as possible.

d. The Health Commissioner may make a reinspection upon the request of the permittee. When the Health Commissioner determines that the necessary corrective action has been taken, the operation may be resumed.

##### Sec. 13.38. Revocation of Permit.

a. Any permit issued hereunder may be revoked by the Health Commissioner as a result of the willful or continuous violation of any provision of this Chapter.

b. No such revocation shall be ordered by the Health Commissioner except after a hearing upon at least 10

address or such other address as designate in writing on the request.

d. At such hearing, the same rules of apply as in the case of the hearing by Commissioner; provided, that upon the permittee, the Board shall cause before it to be recorded by a stenographer employed for such purpose, and the with all papers and documents filed i reproduced by said Board in the form of copy of which shall be available to ar

e. The expense of such proceeding charged to the permittee who applied except that copies of transcripts of the expense of the party obtaining the se may require the permittee to dep application an amount determined by necessary to secure such expense.

f. The Board shall make written findi shall enter its final order or determinati in writing in the permanent records of

#### ARTICLE XI. ENFORCEMENT

##### Sec. 13.41 Enforcement.

It shall be the duty of the Health C enforce the provisions of this Chapt issued in conflict with the provisions shall be null and void. A violation of an the Health Commissioner or Board sha to be a violation of this Chapter.

##### Sec. 13.42. Violations.

Whenever the Health Commissioner any food service establishment, te service establishment, mobile food se ment, food market, temporary food n operator, food handler or any other pe violation of any of the provisions of the Health Commissioner shall furnish ev willful violation to the Prosecuting At County, Indiana or the attorney for the E seek all appropriate legal remedie persons violating said provisions of this Sec. 13.43. Penalty.

Any person who willfully violate provisions of this Chapter shall be sub not more than \$500.00 for each violati the existence of any violation of this C considered to be a separate offense.

##### Sec. 13.44. Injunction.

The Health Commissioner may bring i injunction in the Circuit or Superior i County, Indiana, to restrain any perso the provisions of this Chapter, to cause to be prevented, abated or removed.

##### Sec. 13.45. Expense.

Any person violating any of the pro Chapter shall be liable to the Fort-Wayn Board of Public Health for expense, l occasioned by reason of such viola reasonable attorney's fees and cost.

##### Sec. 13.46. Cumulative.

The remedies provided in this Chv cumulative, and not exclusive, and sha to any other remedy provided by law.

#### SECTION 2. All ordinances or parts o conflict herewith are hereby repealed.

The invalidity of any section, claus provision of this Chapter shall not affec any other part of this Chapter.

SECTION 3. That this Ordinance sha and effect from and after its passage a necessary approval by the Mayor and publication.

TH  
C  
Read the third time in full and on m seconded by Redd, and duly adopted, passage. PASSED by the following vot  
AYES: Nine  
Bradbury, Burns, Edmonds, GliaQ Long, Redd, Schmidt, Talarico  
NAYS: None  
ABSTAINED: None  
ABSENT: None

Sandr



here food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of its ordinance shall not include meat or poultry slaughterhouses.

i) **FOOD OR BEVERAGE VENDING MACHINE** shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverage, either in bulk or in package.

j) **FOOD-PROCESSING ESTABLISHMENTS** shall mean a commercial establishment in which food is processed or otherwise prepared, packaged or manufactured for human consumption.

k) **FOOD SERVICE ESTABLISHMENT** shall mean any food establishment, including but not limited to, a restaurant, coffee shop, cafeteria, short-order cafe, ice-creamette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant, drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public, non-profit organization or institution routinely serving food, and any other eating or drinking establishment where food or drink is prepared, served or provided for human consumption with or without charge.

l) **HEALTH COMMISSIONER** shall mean the Director of Public Health of the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or his/her authorized representative.

m) **IMMINENT HEALTH HAZARD** shall mean any event, circumstance or situation which in the sole discretion of the Health Commissioner, or his/her authorized representative, presents a serious or present health risk to a person or the public.

n) **MACHINE LOCATION** shall include, but not limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed or operated.

o) **MOBILE FOOD MARKET** shall mean any food establishment capable of being readily moved from location to location where food, intended for human consumption outside of the facility, is stored, sold or offered for sale in prepackaged form, fresh or frozen, at retail or wholesale prices.

p) **MOBILE FOOD SERVICE ESTABLISHMENT** shall mean any food establishment without a fixed location capable of being readily moved intact from location to location by its motorized power unit, or as a trailer, or as a peddled or pushed carrier, or as a tote box.

q) Operate and/or its derivatives shall mean the doing or performing or practical work or involving the practical application or principals or processes.

r) **PERMIT** shall mean a certificate and/or a permit number of a size and style previously approved by the Health Commissioner.

s) **PERMITEE** shall include the person who is the owner of or responsible for the operation of a food establishment which shall include his/her/its authorized representative and who shall be responsible for the acceptance of all notices at the address listed on the application for any permit issued hereunder.

t) **PERSON** shall include, but not be limited to, an individual, a corporation, firm, partnership, proprietorship, association, business organization, municipality or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

u) **POTENTIALLY HAZARDOUS FOOD** shall mean any perishable food that consist in whole or in part of milk or milk products, eggs, meat, poultry, fish, shell fish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a PH level of four and six-tenths (4.6) or below or a water activity (AW) value of eighty-five hundredths (0.85) or less under standard conditions or food products in hermetically sealed containers processed to prevent spoilage.

v) **SAFE TEMPERATURES** as applied to potentially hazardous food shall mean food temperatures at 45 degrees F or below, and 140 degrees F or above, and frozen foods at 0 degrees F or below, provided, however, a tolerance of 5 degrees shall be permitted on frozen foods only.

w) **TEMPORARY FOOD MARKET** shall mean any food establishment in an enclosure, stall or other facility, whether fixed or mobile, operating at a fixed location on a seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits, vegetables, honey or cider intended for human consumption off the premises are offered for sale at retail or wholesale.

x) **TEMPORARY FOOD SERVICE ESTABLISHMENT** shall mean any food establishment operating at one site or location for a period of time not in excess or

Sec. 13.11. Fees.

Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, a fee or fees, which shall be deposited into the City-County Health Fund for each such operation in accordance with the classification as established in the following schedule of fees.

Sec. 13.12. Application Fees.

a) Each new food establishment shall be required to pay a fee for the review of plans, specifications and the initial inspection of the food establishment. This fee is in addition to the permit fee. The application fee shall be based upon the square footage of the building floor area or, in those instances where the food establishment takes up only a portion of the total floor area, the actual square footage of floor area involved with the operation of the food establishment, as follows:

1. Under 3,000 square feet \$75.00
2. 3,001 to 30,000 square feet \$150.00
3. 30,001 to 40,000 square feet \$225.00
4. 40,001 to 60,000 square feet \$300.00
5. 60,001 square feet and over \$375.00

b) Each new permittee of a food establishment which is in existence has been operating on a continual basis up to the time that the new permittee takes over the ownership or possession of said food establishment shall be required to pay a fee of \$50.00 for the initial inspection of the food establishment. This fee is in addition to the permit fees as set out herein.

Sec. 13.13. Permit Fees for Food Service Establishment, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment.

Permit fees for Food Service Establishments, Temporary Food Service, Temporary Food Markets, Food Processing Establishments are as follows:

1. 1 through 5 employees \$110.00
2. 6 through 9 employees \$150.00
3. 10 through 40 employees \$175.00
4. 41 employees and over \$200.00
5. Temporary food service establishments as follows:

- a. 1 to 2 days \$15.00
- b. 3 to 4 days \$30.00
- c. 5 to 6 days \$45.00
- d. 7 to 9 days \$60.00
- e. 10 to 11 days \$75.00
- f. 12 to 14 days \$90.00

6. Temporary Food Market \$25.00

Sec. 13.14. Permit Fees for a Food Market.

Permit fees for a Food Market are as follows:

Square Footage of Floor Area:

1. Under 3,000 square feet \$90.00
2. 3,000 to 30,000 square feet \$180.00
3. 30,001 to 40,000 square feet \$265.00
4. 40,001 to 60,000 square feet \$355.00
5. 60,001 square feet and over \$445.00

Sec. 13.15 Permit Fees for a Mobile Food Service Establishment and/or Mobile Food Market.

Permit fees for a Mobile Food Service Establishment and/or Mobile Food Market with Gross Weight of:

1. under 1,000 pounds \$110.00
2. Over 1,000 pounds \$170.00

Sec. 13.16. Permit Fees for a Vending Operator.

Permit Fees for a Vending Operator are as follows:

1. One to ten food or beverage vending machines, per machine \$7.50
2. Eleven to twenty-five machines \$112.50
3. Twenty-six to Fifty machines \$ 150.00
4. Fifty-one to one hundred machines \$225.00
5. One hundred and one to than two hundred machines \$300.00
6. Two hundred and one to three hundred machines \$375.00
7. Three hundred and one or more machines \$450.00

Sec. 13.17. Permit Fee Owned and/or Operated by Any School Corporation.

The application fee and/or permit fee for any food establishment which is owned and/or operated by any school corporation shall be \$15.00 regardless of any of the above and foregoing.

Sec. 13.18. Failure to Obtain or Renew Permit.

Should any permittee fail to obtain the permit prior to the opening of the food establishment for business, or should any permittee fail to renew his permit on or before the anniversary date of said permit, then said annual fee shall be the sum of the annual fee set forth above for that particular food establishment plus 25 % of said fee. Nothing in this section shall prevent the Health Commissioner from exercising any other of his/her rights and/or duties regarding suspension, closure or revocation of the permit.

Sec. 13.19. Exemption.

a. The permit fee provisions of this ordinance shall not apply to any fruit and vegetable stands maintained

the term "misbranded" as used in this Chapter does not mean a meal item prepared to an individual recipe, that is denominated by commonly accepted menu terminology.

Sec. 13.28. Health Commissioner Examination of Food or Beverage.

Samples of food, or beverage and other substances may be taken and examined by the Health Commissioner as often as he may deem necessary to determine freedom from unwholesome, adulterated or misbranding.

Sec. 13.29 Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.

The Health Commissioner may condemn, forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded.

Sec. 13.30. Public Embargo.

Whenever the Health Commissioner has probable cause to believe that any food or beverage is adulterated and/or misbranded, he/she shall use the public embargo as outlined in the Indiana Food, Drug and Cosmetic Act, I.C. 16-1-28-22 or 23.

ARTICLE VIII. EDUCATION

Sec. 13.31. Food Handler Education.

Every person who is employed, or is about to be employed as a food handler, shall be familiar with the requirements of 410 I.A.C. Should a food establishment receive a score on a single inspection below 60, receive a score on two consecutive inspections between 60 and 70, be subjected to an immediate closure by the Health Commissioner or be closed for any other reason by the Health Commissioner, then each food handler employed by said food establishment shall be required to attend a food service educational program given, from time to time, by the Department. The Department shall charge a flat fee of \$100.00 to each food establishment for conducting the food service educational program regardless of whether or not attendance is voluntary or involuntary in nature. A copy 410 I.A.C. shall be kept on the premises at all times.

ARTICLE IX. INSPECTIONS

Sec. 13.32 Frequency of Inspection.

Each food establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once each six months, or more frequently if determined necessary by the Health

Commissioner. The existence of a preliminary condition shall specify the corrective action to be taken.

b. Such order shall be effective immediately.

c. Upon petition to the Health Commissioner, the permittee shall be afforded a hearing as soon as possible.

d. The Health Commissioner may make a reinspection upon the request of the permittee. When the Health Commissioner determines that the necessary corrective action has been taken, the operation may be resumed.

Sec. 13.38. Revocation of Permit.

a. Any permit issued hereunder may be revoked by the Health Commissioner as a result of the willful or continuous violation of any provision of this Chapter.

b. No such revocation shall be ordered by the Health Commissioner except after a hearing upon at least 10 days written notice to the permittee of the time, place and nature thereof.

c. Such notice shall be served upon the permittee by leaving, or mailing by Certified Mail, the notice to the address listed by the permittee as his/her/its address on the permit application.

Sec. 13.39. Hearing.

a. At any hearing required under this Chapter, every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded.

b. Upon the conclusion of such hearing, the Health Commissioner shall enter a final order determining the issue (s), which shall be conclusive upon all parties, subject to the right to appeal.

Sec. 13.40. Appeal.

a. Any permittee aggrieved by any final order of the Health Commissioner shall be entitled to a review of the final order before the Board by filing a written request therefore with the Secretary of the Board within 15 days after such final order is issued.

b. Upon the Health Commissioner's receipt of such request, the Board shall hear the matter denovo in open hearing upon at least 10 days written notice of time, place and nature thereof. The notice shall be issued by the Secretary of the Board to the Health Commissioner and the permittee filing the request.

c. The notice shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the

any other part of this Chapter.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor and all necessary publication.

Thomas C. Henry  
Councilmember

Read the third time in full and on motion by Henry, seconded by Redd, and duly adopted, placed on its passage, PASSED by the following vote:

AYES: Nine  
Bradbury, Burns, Edmonds, GiaQuinta, Henry, Long, Redd, Schmidt, Talarico  
NAYS: None  
ABSTAINED: None  
ABSENT: None

Sandra E. Kennedy  
City Clerk

DATED 2-26-91

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-07-91 on the 26th day of February, 1991.

Samuel J. Talarico  
Presiding Officer

ATTEST:

Sandra E. Kennedy  
City Clerk

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of February, 1991, at the hour of 2:00 o'clock P.M., E.S.T.

Sandra E. Kennedy  
City Clerk

Approved and signed by me this 28th day of February, 1991, at the hour of 5:15 o'clock P.M. E.S.T.

Paul Heimke  
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-07-91, passed by the Common Council on the 26th day of February, 1991, and that said Ordinance was duly signed and approved by the Mayor on the 28th day of February, 1991, and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 28th day of February, 1991.

SANDRA E. KENNEDY, CITY CLERK

3-8-15



## Additional charge for notice (50 percent of above amount)

### LEGAL NOTICE

Notice is hereby given that on the 26th day of February, 1991, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-91-02-27 (as amended) (as amended) General Ordinance No. G-07-91 to-wit: BILL NO. G-91-02-27 AS AMENDED) (AS AMENDED)

GENERAL ORDINANCE NO. G-07-91 AN ORDINANCE amending Chapter 13 of the City of Fort Wayne Code of Laws.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Chapter 13 of the City of Fort Wayne Code of Laws be amended as follows:

CHAPTER 13. FOOD AND BEVERAGE ESTABLISHMENTS

ARTICLE I. IN GENERAL

Sec. 13.1 Definitions.

ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.

Sec. 13.3. Posting.

Sec. 13.4. Separate Permits.

Sec. 13.5. Application/Food Establishment.

Sec. 13.6. Application/Vending Machine.

Sec. 13.7. Issue.

Sec. 13.8. Term.

Sec. 13.9. Permit not Transferable.

ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION OF FOOD ESTABLISHMENTS AND VENDING MACHINES

Sec. 13.10. Construction, Renovation and Alteration of Food Establishments and Vending Machines.

ARTICLE IV. APPLICATION AND/OR PERMIT FEES

Sec. 13.11. Fees.

Sec. 13.12. Application Fees.

Sec. 13.13. Permit Fees for Food Service Establishments, Temporary Food Service Establishments, Temporary Food Markets, and Food Processing Establishments.

Sec. 13.14. Permit Fees for a Food Market.

Sec. 13.15. Permit Fees for a Mobile Food Service Establishment and/or Mobile Food Market.

Sec. 13.16. Permit Fees for a Vending Operator.

Sec. 13.17. Permit Fees for Food Establishments Owned or Operated by any School Corporation.

Sec. 13.18. Failure to Obtain or Renew Permit.

Sec. 13.19. Exemption.

ARTICLE V. MINIMUM SANITARY REQUIREMENTS

Sec. 13.20. Minimum Sanitary Requirements for Food Establishments, Vending Operators, Food and Beverage Vending Machines and Bed and Breakfast Inns.

Sec. 13.21. The Minimum Sanitary Requirements for Temporary Food Markets.

Sec. 13.22. Adoption of Rules and Regulations Established by the Indiana State Board of Health for Bed and Breakfast Inns.

Sec. 13.23. Designation of a "No Smoking" Area.

ARTICLE VI. HEALTH AND DISEASE CONTROL

Sec. 13.24. Infected Persons Prohibited.

Sec. 13.25. Procedure When Disease Suspected.

Sec. 13.26. Hand Washing.

ARTICLE VII. SALE, EXAMINATION, CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD OR BEVERAGE

Sec. 13.27. Sale of Food or Beverage which is Unwholesome, Adulterated or Misbranded.

Sec. 13.28. Health Commissioner Examination of Food or Beverage.

Sec. 13.29. Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.

Sec. 13.30. Public Embargo.

ARTICLE VIII. EDUCATION

Sec. 13.31. Food Handler Education.

ARTICLE IX. INSPECTIONS

Sec. 13.32. Frequency of Inspection.

Sec. 13.33. Inspection of Temporary Food Service Establishment.

Sec. 13.34. Authority to Inspect and to Copy Record.

Sec. 13.35. Procedure When Violations Noted.

ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE, REVOCATION HEARING AND REINSTATEMENT OF PERMIT.

Sec. 13.36. Suspension of Permit.

Sec. 13.37. Immediate Closure.

Sec. 13.38. Revocation of Permit.

Sec. 13.39. Hearing.

Sec. 13.40. Appeal.

ARTICLE XI. ENFORCEMENT

Sec. 13.41. Enforcement.

Sec. 13.42. Violations.

not to exceed six (6) consecutive calendar months where only fresh fruits, vegetables, honey or cider intended for human consumption off the premises are offered for sale at retail or wholesale.

x) TEMPORARY FOOD SERVICE ESTABLISHMENT shall mean any food establishment operating at one site or location for a period of time not in excess of fourteen (14) consecutive calendar days, in connection with a fair, carnival, circus, public exhibition, or any other gathering, whether or not the facility is fixed or movable.

y) UNTENSIL shall mean all containers or any equipment of any kind or nature, including, but not necessarily limited to any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.

z) VENDING OPERATOR shall include, but not necessarily be limited to any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more food or beverage vending machines.

### ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.

It shall be unlawful for any person to sell any food or to operate a food establishment or to act, whether actually, or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Commissioner, or is otherwise exempted from the provisions of this ordinance.

Sec. 13.3 Posting.

All permits shall be posted in a conspicuous place in each food establishment. With respect to mobile food service establishment, or mobile food market, the name, address and telephone number of the permittee, shall be conspicuously displayed on each vehicle not less than two (2) inches in height.

Sec. 13.4. Separate Permits.

A separate permit shall be required for each food establishment and/or vending operator regardless of whether or not they are contained in the same building, where the person owning and/or operating same are not identical. For each kitchen within a food establishment, a separate license shall be obtained and a separate license fee shall be paid.

Sec. 13.5. Application/Food Establishment.

The application for a food establishment permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate, the address of the establishment and the number of food handlers employed therein, which shall include the permittee's manager, or other supervisory personnel. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection of the food establishment.

Sec. 13.6. Application/Vending Machine.

The application for a vending operator permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate and the number of vending machines intended to be operated. In addition, said application shall specify the location of any commissary or commissaries, the number and type of food or beverage vending machines, the locations maintained by the permittee where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food or beverages to be dispensed through vending machines. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection.

Sec. 13.7. Issue.

A permit shall be issued subsequent to application and inspection upon a determination by the Health Commissioner that the permittee has complied with all the applicable provisions of this Chapter, tendered the appropriate permit fee hereinafter specified and obtained the necessary sign off sheets from the appropriate fire and building departments.

Sec. 13.8. Term.

a. The permit for a food service establishment, mobile food service establishment, food market, mobile food market, vending operator, commissary or food processing establishment shall be for a term of one year beginning upon the date of issue.

1. Said permit shall be renewed annually on or before the 15th day of the anniversary month.

b. The permit for a temporary food service establishment shall be for a term not to exceed fourteen (14) consecutive calendar days.

Health Commissioner from exercising any other of his/her rights and/or duties regarding suspension, closure or revocation of the permit.

Sec. 13.19. Exemption.

a. The permit fee provisions of this ordinance shall not apply to any fruit and vegetable stands maintained

and operated by a person who sells directly to a consumer, fresh fruits, vegetables honey or cider grown or sold on lands owned or controlled by him.

b. The permit fee provisions of this ordinance shall not apply to any food establishments of vending operators which comply with the terms and provisions of I.C. 16-1-20-26, unless they waive said exemption and/or operate more than thirty days in a calendar year and provide food service to persons other than members, guests or students on a regular basis.

1. Applicants for this exemption shall provide the Health Commissioner with a copy of its 501(c)(3) status.

c. Establishments which sell or offer for sale freshly popped popcorn, coffee or prepackaged confections such as candy, chewing gum, nuts, potato chips, pretzels, popcorn, soft drinks, ice, or pre-packaged non-readily perishable food or food products in hermetically sealed containers processed to prevent spoilage shall be exempt from the provisions of Articles II. and IV. regarding the necessity for obtaining a permit and/or the payment of any fee.

d. Vending machines which dispense only prepackaged, prebottled, non-readily perishable food and beverages shall be exempt from the provisions of this Chapter.

### ARTICLE V. MINIMUM SANITARY REQUIREMENTS

Sec. 13.20. Minimum sanitary requirements for food establishments, vending operators, food and beverage vending machines and bed and breakfast inns.

a. All food establishments, vending operators and food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as provided in its Regulations 410 IAC 7-15.1 and 7-16.1, as amended.

b. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall be required to tap into a publicly supplied water system when said tap is located within 300 feet of the boundary lines of the real estate upon which said food establishment is located, when said system is adequate to handle an additional tap-in, and when the permittee has direct access to said system by means of easements or other necessary grants of authority. In the case where the permittee does not have direct access to said system, the permittee shall be required to make a diligent and reasonable effort to obtain the necessary easements and/or other grants of authority to obtain access to the system.

Sec. 13.21. The minimum sanitary requirements for temporary food markets are as follows.

a. Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.

b. All equipment and utensils used in storing and displaying fresh fruits and vegetables shall be sanitized.

c. Only fresh fruits, honey, cider and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.

d. All fresh fruits, honey, cider and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such a manner as to protect the food from contamination by splash, foot traffic, dust, animals and other means.

e. Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.

f. All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees may not expectorate or use tobacco in any form within the establishment.

g. The Health Commissioner may augment such requirements when he/she may deem it necessary to prevent a condition which may constitute a public health hazard.

Sec. 13.22. Adoption of Rules and Regulations Established by the Indiana State Board of Health for Bed and Breakfast Inns.

The rules and regulations established by the Indiana State Board of Health regarding the operation of Bed and Breakfast Inns as set forth in the Indiana Administrative Code are hereby adopted.

Sec. 13.23. Designation of a "No Smoking" Area.

The permittee of any food establishment where food is sold for consumption on the premises shall designate a portion of the area where the food is consumed as a "no smoking" area. Smoke or smoking means that carrying or holding of lighted pipe, cigar, cigarette or

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Wiley County, IN  
RUE



F.W. COMMON COUNCIL  
(Governmental Unit)  
Allen  
County, Indiana

To: The News-Sentinel Dr.  
P.O. Box 100  
Fort Wayne, IN

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set)  
-- number of equivalent lines  
Head -- number of lines  
Body -- number of lines  
Tail -- number of lines  
Total number of lines in notice

COMPUTATION OF CHARGES

964 lines, 1 columns wide equals 964 equivalent lines  
at .495 cents per line \$ 477.18  
Additional charge for notices containing rule or tabular work (50 percent of above amount)  
Charge for extra proofs of publication (\$1.00 for each proof in excess of two) 2.00  
TOTAL AMOUNT OF CLAIM \$ 479.18

DATA FOR COMPUTING COST

Width of single column 12.5 ems  
Number of insertions 2  
Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date: MARCH 15, 1991 Title: Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana )  
Allen County )

Personally appeared before me, a notary public in and for said county and state, the undersigned PATTY JAMES who, being duly sworn, says that he/she is Clerk of the The News-Sentinel newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for TWO time(s), the dates of publication being as follows:

3-8, 15/91

Subscribed and sworn to before me this 15th day of MARCH 1991

Notary Public Whitley County, IN  
SHELLEY R. LARUE  
My commission expires: March 3, 1994



Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-91-02-27 (as amended) (as amended) General Ordinance No. G-07-91 to-wit: BILL NO. G-91-02-27 AS AMENDED) (AS AMENDED)

GENERAL ORDINANCE NO. G-07-91 AN ORDINANCE amending Chapter 13 of the City of Fort Wayne Code of Laws.

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ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.

Sec. 13.3. Posting.

Sec. 13.4. Separate Permits.

Sec. 13.5. Application/Food Establishment.

Sec. 13.6. Application/Vending Machine.

Sec. 13.7. Issue.

Sec. 13.8. Term.

Sec. 13.9. Permit not Transferable.

ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION OF FOOD ESTABLISHMENTS AND VENDING MACHINES

Sec. 13.10. Construction, Renovation and Alteration of Food Establishments and Vending Machines.

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Sec. 13.11. Fees.

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Sec. 13.30. Public Embargo.

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Sec. 13.31. Food Handler Education.

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Sec. 13.32. Frequency of Inspection.

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Sec. 13.35. Procedure When Violations Noted.

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Sec. 13.36. Suspension of Permit.

Sec. 13.37. Immediate Closure.

Sec. 13.38. Revocation of Permit.

Sec. 13.39. Hearing.

Sec. 13.40. Appeal.

ARTICLE XI. ENFORCEMENT

Sec. 13.41. Enforcement.

Sec. 13.42. Violations.

Sec. 13.43. Penalty.

Sec. 13.44. Injunction.

Sec. 13.45. Expense.

Sec. 13.46. Cumulative.

ARTICLE I. IN GENERAL

Sec. 13.1. Definitions.

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation and enforcement of this Chapter.

a) BOARD shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.

b) COMMISSARY shall mean any food establishment, including, but not limited to, any place in which food, beverages, food or beverage ingredients, containers, or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.

c) DANGEROUS COMMUNICABLE DISEASE shall include those diseases which epidemiological evidence indicates can be transmitted through food preparation.

d) DEPARTMENT shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or its employees.

e) FOOD shall include, but not necessarily be limited to, all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery, or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof or which become components thereof.

f) FOOD ESTABLISHMENT shall mean any "food service establishment", "temporary food service establishment", "mobile food service establishment", "food market", "temporary food market", "mobile food market", "food or beverage vending machine", "food processing establishment", "commissary", or any other establishment where food intended for human consumption is manufactured, produced, stored, warehoused, prepared, handled, transported, sold, served or provided with or without charge; provided, however, that when the entire operation of a food establishment is receiving continuous inspection by an appropriate state or federal government agency, including the United States Department of Agriculture Consumer and Marketing Service or the Indiana State Board of Health, it shall not be included in the above definition, except that the Department shall be permitted to enter such food establishment to race spoiled or defective products that are suspected to be spoiled or defective when the same are discovered in any food establishment.

g) FOOD HANDLER shall include, but not necessarily be limited to, any person who may come into contact with food by sale, processing, preparation, packaging, serving, or who comes in contact with any utensil or equipment of any kind used in said process, or who is employed in a room or rooms in which food is being processed, prepared, packaged, served, or sold.

h) FOOD MARKET shall mean any food establishment, including, but not limited to, a grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any other food establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of this ordinance shall not include meat or poultry slaughterhouses.

i) FOOD OR BEVERAGE VENDING MACHINE shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens,

j) FOOD-PROCESSING ESTABLISHMENTS shall mean a commercial establishment in which food is processed or otherwise prepared, packaged or manufactured for human consumption.

k) FOOD SERVICE ESTABLISHMENT shall mean any food establishment, including but not limited to, a restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant, drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public, or non-profit organization or institution routinely serving food, and any other eating or drinking establishment where food or drink is prepared, served or provided for human consumption with or without charge.

l) HEALTH COMMISSIONER shall mean the Director of Public Health of the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana, and/or his/her authorized representative.

m) IMMINENT HEALTH HAZARD shall mean any event, circumstance or situation which in the sole discretion of the Health Commissioner, or his/her authorized representative, presents a serious and present health risk to a person or the public.

n) MACHINE LOCATION shall include, but not limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed or operated.

o) MOBILE FOOD MARKET shall mean any food establishment capable of being readily moved from location to location where food, intended for human consumption outside of the facility, is stored, sold or offered for sale in prepackaged form, fresh or frozen, at retail or wholesale prices.

p) MOBILE FOOD SERVICE ESTABLISHMENT shall mean any food establishment without a fixed location capable of being readily moved intact from location to location by its motorized power unit, or as a trailer, or as a peddler or pushed carrier, or as a tote box.

q) Operate and/or its derivatives shall mean the doing or performing or practical work or involving the practical application or principals or processes.

r) PERMIT shall mean a certificate and/or a permit number of a size and style previously approved by the Health Commissioner.

s) PERMITTEE shall include the person who is the owner of or responsible for the operation of a food establishment which shall include his/her/its authorized representative and who shall be responsible for the acceptance of all notices at the address listed on the application for any permit issued hereunder.

t) PERSON shall include, but not be limited to, an individual, a corporation, firm, partnership, proprietorship, association, business organization, municipality or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

u) POTENTIALLY HAZARDOUS FOOD shall mean any perishable food that consist in whole or in part of milk or milk products, eggs, meat, poultry, fish, shell fish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include foods which have a PH level of four and six-tenths (4.6) or below or a water activity (AW) value of eighty-five hundredths (0.85) or less under standard conditions or food products in hermetically sealed containers processed to prevent spoilage.

v) SAFE TEMPERATURES as applied to potentially hazardous food shall mean food temperatures at 45 degrees F or below, and 140 degrees F or above, and frozen foods at 0 degrees F or below, provided, however, a tolerance of 5 degrees shall be permitted on frozen foods only.

w) TEMPORARY FOOD MARKET shall mean any food establishment in an enclosure, stall or other facility, whether fixed or mobile, operating at a fixed location on a seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits, vegetables, honey or cider intended for human consumption off the premises are offered for sale at retail or wholesale.

x) TEMPORARY FOOD SERVICE ESTABLISHMENT shall mean any food establishment operating at one site or location for a period of time not in excess of fourteen (14) consecutive calendar days, in connection with a fair, carnival, circus, public exhibition, or any other gathering, whether or not the facility is fixed or movable.

y) UNTENSIL shall mean all containers or any equipment of any kind or nature, including, but not necessarily limited to any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.

z) VENDING OPERATOR shall include, but not necessarily be limited to any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more food or beverage vending machines.

ARTICLE II. PERMITS

Sec. 13.2. Permit Requirements.

It shall be unlawful for any person to sell any food or to operate a food establishment or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Commissioner, or is otherwise exempted from the provisions of this ordinance.

Sec. 13.3. Posting.

All permits shall be posted in a conspicuous place in each food establishment. With respect to mobile food service establishment, or mobile food market, the name, address and telephone number of the permittee, shall be conspicuously displayed on each vehicle not less than two (2) inches in height.

Sec. 13.4. Separate Permits.

A separate permit shall be required for each food establishment and/or vending operator regardless of whether or not they are contained in the same building, where the person owning and/or operating same are not identical. For each kitchen within a food establishment, a separate license shall be obtained and a separate license fee shall be paid.

Sec. 13.5. Application/Food Establishment.

The application for a food establishment permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate, the address of the establishment and the number of food handlers employed therein, which shall include the permittee's manager, or other supervisory personnel. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection of the food establishment.

Sec. 13.6. Application/Vending Machine.

The application for a vending operator permit shall be made to the Health Commissioner on forms provided by the Health Commissioner. Such forms shall show, among other information which may be required by the Health Commissioner, the legal name, address and telephone number of the permittee, the name under which said permittee intends to operate and the number of vending machines intended to be operated. In addition, said application shall specify the location of any commissary or commissaries, the number and type of food or beverage vending machines, the locations maintained by the permittee where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food or beverages to be dispensed through vending machines. Said application shall include the signature of the permittee or its authorized representative and the Health Commissioner's report of the initial inspection.

Sec. 13.7. Issue.

A permit shall be issued subsequent to application and inspection upon a determination by the Health Commissioner that the permittee has complied with all the applicable provisions of this Chapter, tendered the

necessary sign off sheets from the appropriate fire and building departments.

Sec. 13.8. Term.

a. The permit for a food service establishment, mobile food service establishment, food market, mobile food market, vending operator, commissary or food processing establishment shall be for a term of one year beginning upon the date of issue.

1. Said permit shall be renewed annually on or before the 15th day of the anniversary month.

b. The permit for a temporary food service establishment shall be for a term not to exceed fourteen (14) consecutive calendar days.

c. The permit for a temporary food market shall be for a term not to exceed six consecutive calendar months on a seasonal basis.

Sec. 13.9. Permit not Transferable.

No permit issued to any permittee under this Chapter shall be transferable.

a. A new permittee taking over a continuously operating food establishment shall be entitled to a nonrenewable probationary permit.

b. The probationary permit will be issued at the time the new permittee makes application for an annual food establishment permit and pays all application and permit fees.

c. The probationary permit will be valid for a period of thirty days, which commences on the date of application, and shall not be subject to any extensions.

d. The new permittee must obtain its annual permit within the thirty day probationary period or its permit will be revoked until the permittee complies with all annual permit requirements.

e. The annual permit issued within the thirty day probationary period shall have its anniversary date, the original date of application for the probationary permit.

ARTICLE III. CONSTRUCTION, RENOVATION AND ALTERATION OF FOOD ESTABLISHMENTS AND VENDING MACHINES.

Sec. 13.10. Construction, Renovation and Alteration of Food Establishments and Vending Machines.

All construction, renovation and alteration of food establishments and vending machines shall be as follows:

a) all food establishments which are hereinafter constructed or renovated shall conform in their construction to the applicable requirements or Article V. of this Ordinance.

b) no such construction, renovation or alteration shall begin without the construction, renovation or alteration plans being first submitted to and approved by the Health Commissioner. Failure to obtain the Health Commissioner's approval, shall be the basis for the issuance of an immediate stop work order by the Health Commissioner.

c) all equipment installed in a food establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing or serving of food or drink, shall be of a type conforming with the minimum standards of the National Sanitation Foundation (NSF) or (ETL), or better.

d) the Health Commissioner may condemn equipment that fails to meet NSF or ETL standards.

e) all food establishments must fully comply at all times with all local and state building and fire codes. Compliance with the building and fire codes is a precondition to the issuance, reinstatement or renewal of any permit. Failure of any permittee to fully comply with said building and fire codes shall be the basis for the suspension, immediate closure and/or revocation of any permit issued hereunder.

f) all food establishments involved with the on-site preparation of food shall be required to install and maintain a food preparation sink which is separate and independent of the other sinks required under 410 IAC 7-15.1 and 7-16.1, as amended.

ARTICLE IV. APPLICATION AND/OR PERMIT FEES.

Sec. 13.11. Fees.

Prior to the issuance of any permit, each permittee shall first tender to the Treasurer of Allen County, a fee or fees, which shall be deposited into the City-County Health Fund for each such operation in accordance with the classification as established in the following schedule of fees.

Sec. 13.12. Application Fees.

a) Each new food establishment shall be required to pay a fee for the review of plans, specifications and the initial inspection of the food establishment. This fee is in addition to the permit fee. The application fee shall be based upon the square footage of the building floor area or, in those instances where the food establishment takes up only a portion of the total floor area, the actual square footage of floor area involved with the operation of the food establishment, as follows:

1. Under 3,000 square feet \$75.00
2. 3,001 to 30,000 square feet \$150.00
3. 30,001 to 40,000 square feet \$225.00
4. 40,001 to 60,000 square feet \$300.00
5. 60,001 square feet and over \$375.00

b) Each new permittee of a food establishment which is in existence has been operating on a continual basis up to the time that the new permittee takes over the ownership or possession of said food establishment shall be required to pay a fee of \$50.00 for the initial inspection of the food establishment. This fee is in addition to the permit fees as set out herein.

Sec. 13.13. Permit Fees for Food Service Establishment, Temporary Food Service Establishments, Temporary Food Markets, Food Processing Establishment.

Permit fees for Food Service Establishments, Temporary Food Service, Temporary Food Markets, Food Processing Establishments are as follows:

1. 1 through 5 employees \$110.00
2. 6 through 9 employees \$150.00
3. 10 through 40 employees \$175.00
4. 41 employees and over \$200.00
5. Temporary food service establishments as follows:

- a. 1 to 2 days \$15.00
- b. 3 to 4 days \$30.00
- c. 5 to 6 days \$45.00
- d. 7 to 9 days \$60.00
- e. 10 to 11 days \$75.00
- f. 12 to 14 days \$90.00

Sec. 13.14. Permit Fees for a Food Market.

Permit fees for a Food Market are as follows:

Square Footage of Floor Area:

1. Under 3,000 square feet \$90.00
2. 3,000 to 30,000 square feet \$180.00
3. 30,001 to 40,000 square feet \$265.00
4. 40,001 to 60,000 square feet \$355.00
5. 60,001 square feet and over \$445.00

Sec. 13.15. Permit Fees for a Mobile Food Service Establishment and/or Mobile Food Market.

Permit fees for a Mobile Food Service Establishment and/or Mobile Food Market with Gross Weight of:

1. under 1,000 pounds \$110.00
2. Over 1,000 pounds \$170.00

Sec. 13.16. Permit Fees for a Vending Operator.

Permit Fees for a Vending Operator are as follows:

1. One to ten food or beverage vending machines, per machine \$7.50
2. Eleven to twenty-five machines \$112.50
3. Twenty-six to fifty machines \$150.00
4. Fifty-one to one hundred machines \$225.00
5. One hundred and one to two hundred machines \$300.00
6. Two hundred and one to three hundred machines \$375.00
7. Three hundred and one or more machines \$450.00

Sec. 13.17. Permit Fee Owned and/or Operated by Any School Corporation.

The application fee and/or permit fee for any food establishment which is owned and/or operated by any school corporation shall be \$15.00 regardless of any of the above and foregoing.

Sec. 13.18. Failure to Obtain or Renew Permit.

Should any permittee fail to obtain the permit prior to the opening of the food establishment for business, or should any permittee fail to renew his permit on or before the anniversary date of said permit, then said annual fee shall be the sum of the annual fee set forth above for that particular food establishment plus 25 %

99P (Revised 1987)

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Health Commissioner from exercising any other of /her rights and/or duties regarding suspension, sure or revocation of the permit.

Sec. 13.19. Exemption.

a. The permit fee provisions of this ordinance shall apply to any fruit and vegetable stands maintained and operated by a person who sells directly to a consumer, fresh fruits, vegetables honey or cider own or sold on lands owned or controlled by him.

b. The permit fee provisions of this ordinance shall apply to any food establishments of vending operators which comply with the terms and provisions I.C. 16-1-20-26, unless they waive said exemption and/or operate more than thirty days in a calendar year and provide food service to persons other than members, guests or students on a regular basis.

1. Applicants for this exemption shall provide the health commission with a copy of its 501 (c) (3) status.

c. Establishments which sell or offer for sale freshly popped popcorn, coffee or prepackaged confections such as candy, chewing gum, nuts, potato chips, pretzels, popcorn, soft drinks, ice, or pre-packaged non-readily perishable food or food products in immediately sealed containers processed to prevent spoilage shall be exempt from the provisions of Articles III and IV regarding the necessity for obtaining a permit and/or the payment of any fee.

d. Vending machines which dispense only prepackaged, prebottled, non-readily perishable food and beverages shall be exempt from the provisions of this chapter.

ARTICLE V. MINIMUM SANITARY REQUIREMENTS

Sec. 13.20. Minimum sanitary requirements for food establishments, vending operators, food and beverage vending machines and bed and breakfast inns.

a. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as provided in its regulations 410 IAC 7-15.1 and 7-16.1, as amended.

b. All food establishments, with the exception of temporary food markets, vending operators and food and beverage vending machines shall be required to pump into a publicly supplied water system when said system is located within 300 feet of the boundary lines of the real estate upon which said food establishment is located, when said system is adequate to handle an additional tap-in, and when the permittee has direct access to said system by means of easements or other necessary grants of authority. In the case where the permittee does not have direct access to said system, the permittee shall be required to make a diligent and reasonable effort to obtain the necessary easements and/or other grants of authority to obtain access to the system.

Sec. 13.21. The minimum sanitary requirements for temporary food markets are as follows.

a. Every temporary food market shall be located in an area free of obstructions and be kept in a clean sanitary condition.

b. All equipment and utensils used in storing and displaying fresh fruits and vegetables shall be sanitized.

c. Only fresh fruits, honey, cider and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.

d. All fresh fruits, honey, cider and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such a manner as to protect the food from contamination by splash, foot traffic, dust, animals and other means.

e. Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.

f. All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees may not expectorate or use tobacco in any form within the establishment.

g. The Health Commissioner may augment such requirements when he/she may deem it necessary to prevent a condition which may constitute a public health hazard.

Sec. 13.22. Adoption of Rules and Regulations established by the Indiana State Board of Health for Bed and Breakfast Inns.

The rules and regulations established by the Indiana State Board of Health regarding the operation of Bed and Breakfast Inns as set forth in the Indiana Administrative Code are hereby adopted.

Sec. 13.23. Designation of a "No Smoking" Area.

The permittee of any food establishment where food is sold for consumption on the premises shall designate a portion of the area where the food is consumed as a "no smoking" area. Smoke or smoking means that lighting or holding of lighted pipe, cigar, cigarette of any kind or any other lighted smoking equipment of the filling or emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind. The prohibitions, requirements or duties of this section shall not apply to quiet rooms in use for private functions, cocktail lounges or bars, including cocktail lounges and bars within a food establishment.

ARTICLE VI. HEALTH AND DISEASE CONTROL

Sec. 13.24. Infected Persons Prohibited:

a. No person, who has a communicable disease such as an open wound, an acute respiratory infection, vomiting or diarrhea caused by an infection shall work in a food service establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.

b. No person known or believed to be affected with such disease or condition shall be employed in such an area or capacity.

c. If the manager or person in charge of the food establishment has reason to believe that any employee is infected with and disease in a communicable form or is become a carrier of such disease, he shall notify the Health Commissioner immediately.

Sec. 13.25. Procedure When Disease Suspected:

The Health Commissioner may require any or all of the following measures when he/she has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food establishment:

a. The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food establishments.

b. The immediate closure of the affected food establishment until the Health Commissioner determines that no further danger of the disease exists.

The medical examination of any person determined to be a possible carrier or transmitter of the disease, and said person's associates, to such extent may be deemed necessary to satisfy the Health Commissioner that the termination or absence of the disease can be made to a reasonable medical certainty.

Sec. 13.26. Hand Washing.

Before starting to work, each food handler shall thoroughly wash his/her hands, arms and fingernails with soap and warm water and use such other facilities to assure good personal hygiene of the hands, arms and fingernails. Such hand washing must be repeated during working hours after smoking, after using the restrooms, after coughing into hands or as often as may be necessary to remove soil and contamination from hands and fingernails of all food handlers are to get out of their hair, nose and mouth and are to be kept clean while engaged in handling food and food service. Except for essential taste testing in an approved manner, food handlers are not to taste food or beverages during the preparation or serving of any food.

ARTICLE VII. SALE EXAMINATION, CONDEMNATION OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD OR BEVERAGE.

Sec. 13.27. The Sale of Food or Beverage Which is Unwholesome, Adulterated or Misbranded.

It shall be a violation of this Chapter for any person to sell through a food establishment, any food or beverage or substance which is unwholesome, adulterated or misbranded. Provided, however, that the term "Misbranded" as used in this Chapter does not mean a meal item, prepared to an individual recipe, which is denominated by commonly accepted menu

Sec. 13.28. Health Commissioner Examination of Food or Beverage.

Samples of food, or beverage and other substances may be taken and examined by the Health Commissioner as often as he may deem necessary to determine freedom from unwholesome, adulterated or misbranded.

Sec. 13.29. Condemnation by Health Commissioner of Unwholesome, Adulterated or Misbranded Food or Beverage.

The Health Commissioner may condemn, forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded.

Sec. 13.30. Public Embargo.

Whenever the Health Commissioner has probable cause to believe that any food or beverage is adulterated and/or misbranded, he/she shall use the public embargo as outlined in the Indiana Food, Drug and Cosmetic Act, I.C. 16-1-28-22 or 23.

ARTICLE VIII. EDUCATION

Sec. 13.31. Food Handler Education.

Every person who is employed, or is about to be employed as a food handler, shall be familiar with the requirements of 410 I.A.C. Should a food establishment receive a score on a single inspection below 60, between 60 and 70, be subjected to an immediate closure by the Health Commissioner or be closed for any other reason by the Health Commissioner, then each food handler employed by said food establishment shall be required to attend a food service educational program given, from time to time, by the Department. The Department shall charge a flat fee of \$100.00 to each food establishment for conducting the food service educational program regardless of whether or not attendance is voluntary or involuntary in nature. A copy 410 I.A.C. shall be kept on the premises at all times.

ARTICLE IX. INSPECTIONS

Sec. 13.32. Frequency of Inspection.

Each food establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once each six months, or more frequently if determined necessary by the Health Commissioner.

Sec. 13.33. Inspection of Temporary Food Service Establishment.

Each temporary food service establishment for which a permit is required under the provisions of this Chapter shall be inspected at least once each forty-eight hour period.

Sec. 13.34. Authority to Inspect and to Copy Records.

The permittee, shall, upon the request of the Health Commissioner, permit access to all areas of every such food establishment and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment.

Sec. 13.35. Procedure When Violations Noted:

a. If during the inspection of any food establishment the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, he/she shall issue a written order listing such violations, shall deliver said list to the permittee and shall fix a time within which the permittee shall abate or remedy such violations.

b. If during the inspection of any temporary food service establishment or temporary food market the Health Commissioner discovers the violation of any of the sanitary requirements in Section 13.20 of this Chapter, he/she may order the immediate correction of the violation or order any other action as set forth in this Chapter.

c. A copy of the written order shall be filed in the records of the Department after appropriate review by supervisory personnel.

ARTICLE X. SUSPENSION, IMMEDIATE CLOSURE, REVOCATION HEARING AND REINSTATEMENT OF PERMIT

Sec. 13.36. Suspension of Permit.

The Health Commissioner may order the revocation or suspension of any permit issued for a temporary food service establishment or temporary food market which order shall include the prohibition of any further sale or serving of food or beverage. Upon the issuance of the order, the permit shall automatically be considered revoked, null and void. The Health Commissioner may order the revocation or suspension of the permit for any of the following reasons:

a. Failure to meet any of the standards or violations of any of the provisions established by this Chapter.

b. Interference with the Health Commissioner, or his/her authorized representative, in the performance of his/her duties. Interference shall be defined as the process of obstructing, hampering or blocking the Health Commissioner in the performance of his/her duties.

c. At the request of the permittee, a hearing shall be afforded within twenty-four (24) hours of the issuance of the written suspension order. Said hearing shall be conducted as set forth in Sec. 13.38 of this Chapter.

Sec. 13.37. Immediate Closure.

a. Notwithstanding any other provisions of this Chapter, whenever the Health Commissioner or his/her authorized representative finds insanitary or other conditions, involving the operation of any food establishment of food or beverage machine operation which, in his/her opinion, constitutes an imminent health hazard, he/she shall, without notice or hearing, issue and serve a written order to the permittee requiring the immediate closure of its operations, shall cite the existence of insanitary condition and shall specify the corrective action to be taken.

b. Such order shall be effective immediately.

c. Upon petition to the Health Commissioner, the permittee shall be afforded a hearing as soon as possible.

d. The Health Commissioner may make a reinspection upon the request of the permittee. When the Health Commissioner determines that the necessary corrective action has been taken, the operation may be resumed.

Sec. 13.38. Revocation of Permit.

a. Any permit issued hereunder may be revoked by the Health Commissioner as a result of the willful or continuous violation of any provision of this Chapter.

b. No such revocation shall be ordered by the Health Commissioner except after a hearing upon at least 10 days written notice to the permittee of the time, place and nature thereof.

c. Such notice shall be served upon the permittee by leaving, or mailing by Certified Mail, the notice to the address listed by the permittee as his/her/its address on the permit application.

Sec. 13.39. Hearing.

a. At any hearing required under this Chapter, every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded.

b. Upon the conclusion of such hearing, the Health Commissioner shall enter a final order determining the issue (s), which shall be conclusive upon all parties, subject to the right to appeal.

Sec. 13.40. Appeal.

a. Any permittee aggrieved by any final order of the Health Commissioner shall be entitled to a review of the final order before the Board by filing a written request therefore with the Secretary of the Board within 15 days after such final order is issued.

b. Upon the Health Commissioner's receipt of such request, the Board shall hear the matter de novo in open hearing upon at least 10 days written notice of time, place and nature thereof. The notice shall be issued by the Secretary of the Board to the Health Commissioner and the permittee filing the request.

c. The notice shall be served upon the permittee by leaving or mailing by Certified Mail the notice to the address listed on the permit application as permittee's address or such other address as permittee shall designate in writing on the request.

d. At such hearing, the same rules of procedure shall apply as in the case of the hearing before the Health Commissioner; provided, that upon written demand by the permittee, the Board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together

reproduced by said Board in the form of a transcript, a copy of which shall be available to any party.

e. The expense of such proceedings shall be charged to the permittee who applied for the review, except that copies of transcripts shall be at the expense of the party obtaining the same. The Board may require the permittee to deposit with such application an amount determined by the Board to be necessary to secure such expense.

f. The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing in the permanent records of the Board.

ARTICLE XI. ENFORCEMENT

Sec. 13.41. Enforcement.

It shall be the duty of the Health Commissioner to enforce the provisions of this Chapter. Any permit issued in conflict with the provisions of this Chapter shall be null and void. A violation of an order issued by the Health Commissioner or Board shall be considered to be a violation of this Chapter.

Sec. 13.42. Violations.

Whenever the Health Commissioner determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person, is in willful violation of any of the provisions of this Chapter, the Health Commissioner shall furnish evidence of said willful violation to the Prosecuting Attorney of Allen County, Indiana or the attorney for the Board who shall seek all appropriate legal remedies against the persons violating said provisions of this Chapter.

Sec. 13.43. Penalty.

Any person who willfully violates any of the provisions of this Chapter shall be subject to a fine of not more than \$500.00 for each violation. Each day of the existence of any violation of this Chapter shall be considered to be a separate offense.

Sec. 13.44. Injunction.

The Health Commissioner may bring an action for an injunction in the Circuit or Superior Court of Allen County, Indiana, to restrain any person from violating the provisions of this Chapter, to cause such violation to be prevented, abated or removed.

Sec. 13.45. Expense.

Any person violating any of the provisions of this Chapter shall be liable to the Fort-Wayne Allen County Board of Public Health for expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and cost.

Sec. 13.46. Cumulative.

The remedies provided in this Chapter shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The invalidity of any section, clause, sentence or provision of this Chapter shall not affect the validity of any other part of this Chapter.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor and all necessary publication.

Thomas C. Henry  
Councilmember

Read the third time in full and on motion by Henry, seconded by Redd, and duly adopted, placed on its passage, PASSED by the following vote:

AYES: Nine  
Bradbury, Burns, Edmonds, GiaQuinta, Henry, Long, Redd, Schmidt, Talarico  
NAYS: None  
ABSTAINED: None  
ABSENT: None

Sandra E. Kennedy  
City Clerk

DATED 2-26-91

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-07-91 on the 26th day of February, 1991.

Samuel J. Talarico  
Presiding Officer

ATTEST:  
Sandra E. Kennedy  
City Clerk

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of February, 1991, at the hour of 2:00 o'clock P.M., E.S.T.

Sandra E. Kennedy  
City Clerk

Approved and signed by me this 28th day of February, 1991, at the hour of 5:15 o'clock P.M. E.S.T.

Paul Helmke  
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-07-91, passed by the Common Council on the 26th day of February, 1991, and that said Ordinance was duly signed and approved by the Mayor on the 28th day of February, 1991, and now remains on file and on record in my office.

"WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 28th day of February, 1991.

SANDRA E. KENNEDY, CITY CLERK

3-8-15

regoing account is just and correct, that the amount or allowing all just credits, and that no part of the

19 91 Title: Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana )  
) ss:  
Allen County )

Personally appeared before me, a notary public in and for said county and state, the undersigned PATTY JAMES who, being duly sworn, says that he/she is Clerk of the The News-Sentinel newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for TWO time ( s ) , the dates of publication being as follows:

3-8, 15/91

Subscribed and sworn to before me this 15th day of MARCH 19 91

Shelley R. Larue  
Notary Public Whitley County, IN  
SHELLEY R. LARUE

My commission expires: March 3, 1994

General Form No. 99P (Revised 1987)

The News-Sentinel

P.O. Box 100

Fort Wayne, IN

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